

United States
Circuit Court of Appeals
For the Ninth Circuit.

MATSON NAVIGATION COMPANY, a corpora-
tion,

Appellant,

vs.

CHARLES HANSEN,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division.

FILED

AUG - 3 1942

PAUL P. O'BRIEN,
CLERK

No. 10186

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Attorneys for Defendant and Appellant.

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544 Market Street,
San Francisco, California,
Attorneys for Plaintiff and Appellee.



In the District Court of the United States, Northern
District of California, Southern Division.
No. 21972 S.

CHARLES HANSEN,

Plaintiff,

vs.

MATSON NAVIGATION COMPANY, a corporation,
Defendant.

Defendant.

COMPLAINT FOR DAMAGES

(Under the Jones Act)

Plaintiff complains of defendant and alleges:

I.

That defendant Matson Navigation Company is a corporation doing business in the State of Cali-

fornia; and having its office and principal place of business in the City and County of San Francisco, State of California, and is within the jurisdiction of the above entitled court.

II.

That during all the times herein mentioned defendant was the owner and operator of the American merchant vessel "Mauna Lei" and operated said vessel in the transportation by water of passenger and freight for hire, in interstate and foreign commerce.

III.

That plaintiff was in the employ of defendant on January [1*] 15th, 1941, in the capacity of able-bodied seaman.

IV.

That on said 15th day of January, 1941, plaintiff was engaged in working about the deck of said vessel. That on said deck there was a cargo of steel beams. That said steel beams had been improperly and negligently stowed aboard said vessel so that said beams were lying edge-wise on said deck and cross-wise on said deck; that in addition thereto quantities of oil had been spilled about said deck and on said beams. That as a result of the careless and negligent manner in which said beams had been stowed aboard said vessel, and the presence of quantities of oil on said deck and about said beams, said vessel was rendered unseaworthy and plaintiff was

*Page numbering appearing at foot of page of original certified Transcript of Record.

thereby not provided with a safe place within which to work and perform necessary duties aboard said vessel. That at said time and place plaintiff was obliged to perform said duties in and upon said deck and said beams; that while going about his said duties he slipped and fell and in falling involuntarily grasped a line, which said line was in motion and guided his hand and fingers into the sheave of a block, with the result that his left hand and four fingers thereof were crushed, broken and bruised. That plaintiff is permanently disabled as a result thereof.

V.

That as a result of said crushing, breaking and bruising due to the carelessness of defendant in failing to provide plaintiff with a safe place to work he has suffered general damage in the sum of \$20,000.00.

VI.

That from the date of said injury to the date hereof plaintiff has been unable to perform his occupation. That at the time of said injury he was earning the sum of Approximately [2] \$150.00 a month and has therefore suffered further damage in the sum of \$1200.00.

VII.

That plaintiff elects to maintain this action under the provisions of Section 33 of the Act of June 5th, 1920, C. 250, 41 Stat. 1007, commonly known as The Jones Act.

Wherefore, plaintiff prays judgment against defendant in the sum of \$21,200.00, plus costs of suit herein, and for such other relief as the Court may find meet and just.

Dated: September 12, 1941.

ANDERSEN & RESNER
GEORGE R. ANDERSEN
Attorneys for Plaintiff

[Endorsed]: Filed Sept. 12, 1941. [3]

[Title of Court and Cause.]

MOTION OF DEFENDANT MATSON NAVIGATION
COMPANY TO DISMISS AND FOR
MORE DEFINITE STATEMENT.

Defendant Matson Navigation Company moves the Court as follows:

I.

To dismiss the complaint in the above matter, on the ground that it fails to state a claim against defendant upon which relief can be granted.

II.

For a more definite statement of the following matters which are not averred with sufficient definiteness or particularity to enable defendant properly

to prepare its responsive pleading and to prepare for trial:

(a) In paragraph IV of the complaint it does not appear therein nor can it be ascertained therefrom how or by whom the steel beams were stowed aboard the deck of the vessel;

(b) In said paragraph IV it does not appear therein nor can it be ascertained therefrom how or in what manner the presence of oil on the deck of said vessel constituted negligence on the part of the defendant; nor how said oil proximately caused or contributed to plaintiff's alleged injuries.

III.

For a bill of particulars on each and all of the grounds specified in paragraph II herein.

Dated: October 17, 1941.

BROBECK, PHLEGER &
HARRISON

Attorneys for Defendant.

[Endorsed]: Filed Oct. 17, 1941. [4]

District Court of the United States, Northern
District of California, Southern Division.

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday,

the 17th day of November, in the year of our Lord one thousand nine hundred and forty-one.

Present: the Honorable A. F. St. Sure, District Judge.

No. 21972-S Civil

[Title of Cause.]

Defendant's motion to dismiss the complaint herein was argued by George R. Andersen, Esq., attorney for the plaintiff, and Moses Laskey, Esq., attorney for the defendant, and submitted to the Court for consideration and decision. Ordered that said motion be denied, and that the defendant have 10 days within which to file answer. (Notice waived.)

[5]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT MATSON
NAVIGATION COMPANY.

Defendant Matson Navigation Company answers the complaint of plaintiff on file herein as follows:

I.

This defendant admits Paragraph I of the complaint; [6] admits that during all the times herein mentioned the defendant was the owner and operator of the American merchant vessel "Mauna Lei" and operated said vessel in the transportation by water of freight for hire in interstate and foreign com-

merce; admits that plaintiff was employed by defendant on January 15, 1941 in the capacity of able-bodied seaman at the rate of \$82.50 per month plus found; admits that on January 15, 1941 plaintiff was on the deck of said vessel; and alleges that on said date there was stowed on the deck of said vessel a cargo of steel beams. Defendant alleges that plaintiff placed his left hand on a line and said line moved and carried his hand into a block.

II.

Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations that plaintiff's left hand and four fingers thereof were crushed, broken and bruised.

III.

Defendant denies generally and specifically each and every other allegation contained in the complaint not hereinabove admitted or alleged.

IV.

Defendant further denies generally and specifically that plaintiff has suffered damage in the sum of \$20,000 or in any sum or amount or at all.

SECOND DEFENSE

V.

At the time and place mentioned in the complaint the plaintiff so negligently and carelessly placed himself on the [7] deck of the vessel with reference to the gear on said deck, so negligently and carelessly placed his hand on the line near the block

referred to in the complaint, and so negligently and carelessly comported and cared for himself in and about the matters alleged in said complaint, that as a direct and proximate result of his own negligence and carelessness he sustained the injuries alleged in the complaint, and his own carelessness and negligence directly and proximately contributed to the said injuries; the proportion in which his own negligence and carelessness directly and proximately contributed to the alleged injuries was 100%.

THIRD DEFENSE

VI.

The possibility of sustaining the alleged injuries and damages of which plaintiff complains in the complaint was at all of the times mentioned therein a risk incidental to the plaintiff's employment and occupation as a seaman; said risk was open and obvious; the plaintiff at all times knew that said risk existed; and the plaintiff assumed said risk.

Wherefore, defendant Matson Navigation Company prays that it be hence dismissed with its costs of suit herein incurred.

JAMES MOORE
BROBECK, PHLEGER &
HARRISON

Attorneys for Defendant Mat-
son Navigation Company.

(Admission of Service.)

[Endorsed]: Filed Nov. 27, 1941. [8]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW.

This cause came on regularly for trial before the above entitled Court, Hon. A. F. St. Sure presiding, trial by jury having been waived by the parties hereto; plaintiff appearing by his counsel, Messrs. Andersen & Resner, George R. Andersen, Esq. appearing; defendant appearing by its counsel, Messrs. Brobeck, Phleger & Harrison, Robert Burns, Esq. appearing.

Thereupon, evidence, oral and documentary, was introduced by the parties; and after the presentation of evidence had been completed by both parties hereto said cause was argued to the Court and thereupon submitted to the Court for decision, and after fully considering all of the facts in evidence:

The Court now finds the following facts:

1. That on January 15th, 1941, plaintiff, Charles Hansen, was employed as a seaman aboard the vessel "Mauan Lei", which [10] on said date was owned and operated by the defendant, Matson Navigation Company;

2. That this Court has jurisdiction over the cause as pleaded in the complaint herein by virtue of an Act known as the Jones Act, 41 Stat. 1007;

3. That on said January 15th, 1941, while plaintiff was employed as a seaman aboard said vessel, as aforesaid, his left hand was severely injured in the following particulars, namely, that he received fractures of the ring, middle and index fingers and

the thumb of said hand; that said injuries have healed with a good result due to treatment received at the Marine Hospital in San Francisco and at the Queens Hospital in Honolulu, T. H., and that he has a residual and permanent disability which prevents the full flexion of said fingers and thumb and a loss of grasping strength in said left hand;

X 4. That said injuries to said hand, as aforesaid, were proximately caused by the negligence of said defendant in negligently failing to provide plaintiff with a safe place to work aboard said vessel, in that: said vessel was loaded on January 8th, 1941, at San Francisco to sail to the port of Honolulu; that prior to sailing said vessel had taken on board a capacity deck load of steel "I" beams and steel bars; that said deck load of steel was stowed on board said vessel in such a negligent manner that shortly after leaving San Francisco said steel deck load shifted, fell over, and became uneven, with the result that it was very difficult and unsafe to walk on and over said steel deck load. That said defendant did not provide a safe walk-way over said deck load;

5. That shortly prior to the injuries sustained by plaintiff he was working on the starboard side of the forward masthouse paying out a guyline; that in said vicinity there was a considerable amount of oil on the deck and that oil was [11] on said deck load; that in carrying out his duties at said time and place, plaintiff was ordered by his superior to go to the starboard rigging and adjust a block; that he adjusted said block; that in returning to his place

of duty, and while walking over said cargo of steel, and due to the negligent and careless manner in which said steel was maintained aboard said vessel by said defendant, and the said oil on said beams and around the vicinity in which plaintiff was working, plaintiff, without any fault, carelessness or negligence on his part, slipped and fell and in so falling his hand became fouled in a moving line and was carried into a block, with the resulting injuries, as aforesaid;

6. That said defendant Company has provided plaintiff with adequate maintenance and cure during the period that he was disabled from work;

7. And from the foregoing recitation of facts as found by the Court, the Court now makes its

CONCLUSIONS OF LAW

The Court therefore and hereby concludes from the facts and the law plaintiff is entitled to receive the judgment of this Court in his favor and against said defendant; and that he should be and he is hereby awarded damages in the sum of \$2,000.00, plus costs of Court herein against said defendant Matson Navigation Company, and it is further ordered that judgment be entered in favor of plaintiff and against said defendant in accordance with these findings.

Done in open Court this 5th day of May, 1942.

A. F. ST. SURE

Judge of the U. S. District
Court

[Endorsed]: Filed May 5, 1942. [12]

In the Southern Division of the United States
District Court for the Northern
District of California

No. 21972-S

CHARLES HANSEN,

Plaintiff,

vs.

MATSON NAVIGATION COMPANY, a corpora-
TION,

Defendant.

JUDGMENT ON FINDINGS

This cause having come on regularly for trial on the 23rd day of April, 1942, before the Court sitting without a jury; George R. Andersen, Esq., appearing as attorney for plaintiff, and Robert E. Burns, Esq., appearing as attorney for defendant, and the trial having been proceeded with, and oral and documentary evidence on behalf of the respective parties having been introduced and closed, and the cause having been submitted to the Court for consideration and decision; and the Court, after due deliberation, having rendered its decision and filed its findings and ordered that judgment be entered in favor of the plaintiff in the sum of \$2,000.00, and for costs;

Now, therefore, by virtue of the law and by reason of the findings aforesaid, it is considered by the Court that Charles Hansen, plaintiff, do have and recover of and from Matson Navigation Company, a

corporation, defendant, the sum of Two Thousand Dollars (\$2,000.00), together with his costs herein expended taxed at \$56.65.

Judgment entered this 5th day of May, 1942.

WALTER B. MALING,
Clerk.

[Endorsed]: Filed May 5, 1942. [13]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT OF
APPEALS UNDER RULE 73b.

Notice Is Hereby Given that Matson Navigation Company, a corporation, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on May 5, 1942.

Dated: May 13, 1942.

BROBECK, PHLEGER
& HARRISON

HOWARD J. FINN

111 Sutter Street,
San Francisco

Attorneys for Defendant
Matson Navigation
Company

(Receipt of Service)

[Endorsed]: Filed May 14, 1942. [14]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 21 pages, numbered from 1 to 21, inclusive, which together with 1 Volume of the Reporter's Transcript and the deposition of Charles Wood Encell, contain a full, true, and correct transcript of the records and proceedings in the Charles Hansen, Plaintiff, vs. Matson Navigation Company, a corporation, Defendant, No. 21972-S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Four dollars and forty cents (\$4.40) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 22nd day of June, A. D. 1942.

[Seal]

WALTER B. MALING

Clerk

WM. J. CROSBY

Deputy Clerk [22]

[Title of District Court and Cause.]

TESTIMONY

Thursday, April 23, 1942.

COUNSEL APPEARING:

For Plaintiff:

GEORGE R. ANDERSEN,

For Defendant:

ROBERT E. BURNS.

The Court: You may proceed in Hansen v. Matson Navigation Company.

Mr. Andersen: May I briefly outline the case, your Honor?

The Court: Yes, I would like to hear from you.

Mr. Andersen: Most of the facts, here, will not be disputed, I assume. The facts are, briefly, that on the 15th day of January, 1941, Mr. Hansen, my client, sitting at the counsel table, was employed as a seaman, that is, an A. B., aboard a vessel known as the "Mauna Lei," owned by the defendant, Matson Navigation Company. He was an A.B. The ship sailed [1*] from San Francisco on the 15th of January for Honolulu; prior to sailing they had taken on a very large deckload of steel beams and steel reinforcing bars; they were very long, and the load was very heavy. Shortly after sailing out of port, due to the weather, or improper stowage of the beams, one of the two, or a combination of both, this deckload of beams shifted, that is, it fell over, so

*Page numbering appearing at top of page of original Reporter's Transcript.

instead of being an even load it was an uneven load. About a day or so before getting into Honolulu, and in preparation for unloading the ship, the crew was turned to to top the booms, that is, to put the booms in position for unloading, and trimming them; and during that operation they started to raise the booms, they started to top the booms, and get them up to a certain height, and some blocks or some lines on the port side of the ship shifted, or fouled, so that it was necessary to stop that operation with the booms about eight feet in the air. At that particular time Hansen was engaged in this operation of topping the booms on the starboard side of the ship, and when the booms were stopped at that particular time, about six or eight feet in the air, the line being fouled on the port side, he, as an A.B., set the blocks on the lines on the starboard side and walked over to the side or the rigging on the outboard side of the starboard and put a stop on the line that was attached to the rigging, so that it would not shift or move, and then walked back to his position, which was on the mast house. Just as he came back from the shrouds adjusting this block, as he was coming back to his position, a distance of maybe fifteen or eighteen feet, or less, the signal was given to heave away, that is, to resume the operation of topping the booms, and just about that point, while he was walking over the load of beams, and due to the oil that was on the deck [2] and around that place, he slipped; the beams were about this high, and the place that he was working from was about this high, so he had to get down to the deck over these beams,

there was no ladder or anything, and he slipped, and as he slipped he involuntarily grabbed for anything he could get his hands on, and grasped a line which was in motion, and took his hand and fingers into the sheave of a block and broke the bones of his fingers, and cut off a piece of his finger. The basis of our case is the unsafe condition of the deck at the time.

Mr. Burns: May I make a short statement at this time, your Honor?

The Court: Yes.

Mr. Burns: The defendant, Matson Navigation Company, of course does not deny the employment of this man, or the fact that this accident happened at that time. However, the company denies that there was any negligence or failure on its part with respect to this deckload. We expect to show that the deckload was stowed in a safe and seamanlike manner, in accordance with the custom of the sea and ships of this company. They were large steel beams and steel reinforcing bars that were being taken to Honolulu in January of last year; that when the ship got out, the first night out, it hit very heavy seas; the wind, according to the log, was No. 8 on the Beaufort Scale, which is a very heavy wind, right next to a gale, and the ship took seas over its bows. These seas caused the deckload to shift somewhat. However, we expect to show that this is a very common occurrence, at this time of the year there are heavy seas; that no matter how you fasten the deckload, if you get heavy enough seas it will cause it to shift; here there was no danger to the ship, or to the beams in

that shifting, [3] and the ship proceeded on its course. On the day of this accident the men were called out, all hands were called out onto the deck, in order to top the booms.

We expect to show that the weather was fair, it was calm, the sea was smooth; that it is customary, and I do not believe it is denied, that it is customary to top the booms, lift the booms the day before the ship gets into port, the weather permitting. We will show that the men were placed in their particular position by Mr. Rosen, who was the chief mate, and was in charge of the operations, and that the boatswain was at the winches. As the two booms, pair of booms, started to be raised, the blocks on the port side of the ship slipped, and it was necessary to stop the booms in order that the block could be raised a bit, inasmuch as it slipped or came down and fouled on the deckload; that this operation took ten or fifteen minutes; that the duty of Mr. Hansen at that time was, as he had been assigned to slack away on the starboard outboard guy, that he was merely to stand there, that he was not given any orders to do anything else; he was merely to stand in that place. That after the block on the port side had been fixed and secured, the mate gave the order to heave away, and the boatswain hollered "Everybody clear," and the winches were started. A second after they were started a sound was heard of "Ouch," which was from Mr. Hansen, and the mate saw him hauling his hand out of the sheave of the block.

We expect to show by this evidence, your Honor,

that there was no negligence on the part of the company, and if there was any negligence in this particular case it was the negligence of Mr. Hansen, and the accident was solely attributable to his negligence, and as a separate defense, aside from any of these [4] matters, that it is an unavoidable accident that happened in connection with operations at sea, which are necessarily somewhat dangerous, and is a part of the ordinary risks which are attendant on the particular position.

We also expect to show that there was not any unusual amount of grease on the deck, not any more than would naturally come in operating a boat such as the "Mauna Lei," and the deck necessarily must have been very well cleaned when the seas were washing over the deck a few days before.

CHARLES HANSEN,

The Plaintiff, called in his own behalf; sworn.

Mr. Andersen: Q. You are the plaintiff in this case, that is, you are suing the Matson Company?

A. Yes.

Q. What is your occupation?

A. Able bodied seaman.

Q. For how many years have you been going to sea?

A. I have been going to sea over a period of twenty-nine years.

Q. Twenty-nine years?

A. Yes.

(Testimony of Charles Hansen.)

Q. Most of the time as——

A. (Interrupting) A. B. seaman.

Q. Able bodied seaman? A. Yes.

Q. You have worked for the Matson Company, that is, on their vessels, from time to time?

A. Yes, from time to time I have.

Q. And on the 15th of January, 1941 you were an able bodied seaman on the "Mauna Lei"?

A. Yes.

Q. Was that your first, or more than one trip on that particular vessel?

A. I was completing my third voyage on that vessel.

Q. On that vessel at that time, on the 15th of January, you sailed from San Francisco, bound for Honolulu? A. Yes.

Q. Now, at that particular time did the ship have a deckload? [5] A. Yes.

Q. What was the deckload?

A. The deckload forward—in the way of my accident?

Q. Yes.

A. On the port side there were beams, which I believe were approximately 50 feet long.

Q. How about on the starboard side?

A. On the starboard side there were beams, and on top of those beams there was reinforcing steel.

Q. Piled?

A. Piled on top of the long beams.

Q. I show you a photograph which purports to

(Testimony of Charles Hansen.)

be a picture of the "Mauna Lei," taken two or three days after you docked at Honolulu. Does that fairly represent the condition of the load at that time?

A. Yes, it does.

Q. Now, at the time this picture was taken, two or three days after the boat was at Honolulu, had part of the steel been removed at that time?

A. Of course, it would be at the time that was made; I was in the hospital at the time, but from what I know of the load, I know there was a great deal of the steel had been taken off the ship.

Q. At that time?

A. At that particular time; the exact amount of tonnage removed from the time we arrived in Honolulu I don't know.

Mr. Andersen: I will offer this photograph in evidence as Plaintiff's Exhibit No. 1.

Mr. Burns: I will object to it on the ground that the photograph does not show the condition of the starboard side of the deck at the time of the alleged accident.

The Court: Let me see it.

Mr. Burns: In the first place, it shows the wooden hatch coverings are up on the steel beams, there, and they could not [6] have been there at the time that this accident occurred, because the hatches were covered.

Mr. Anderson: I offer it, not to show all the conditions as of the time of the accident, because that was impossible, but to give an idea of the condition

(Testimony of Charles Hansen.)

of the deck a day or two later, from which reasonable inference can be drawn in the light of the testimony that will be given.

The Court: The objection is overruled.

(The photograph was marked "Plaintiff's Exhibit 1.")

Mr. Anderson: Q. Now, at the time that deck load of steel was taken aboard, approximately how high from the deck was it?

A. I will have to stand up. I would say approximately between five and six feet.

Q. Between five and six feet? A. Yes.

Q. Now, was this steel load shored or was it merely lashed, or just how was it secured, if at all?

A. When we came from San Francisco that load was not shored, there were no wooden braces put in between, I mean braces up against the side. There were just temporary lashings put on that load.

Q. Temporary lashings?

A. Temporary lashings.

Q. Now, after you left San Francisco on the 15th, did the deckload remain in position, or did it slip?

A. I beg your pardon, it was not the 15th.

Q. After you left San Francisco on the 15th, I mean sometime thereafter, did it remain in position, or did it shift?

A. Well, it shifted around eight o'clock that night, the sailing night, the same day.

Q. When you say "shifted," just what do you mean? A. Well, it collapsed.

(Testimony of Charles Hansen.)

Q. Do you mean by that it spread over?

A. Yes, it spread all [7] over the deck, and, as a matter of fact, bent the turnbuckles.

Mr. Andersen: For easier reference, if it please the Court, could I use the duplicate of Plaintiff's Exhibit 1? It is easier for handling.

The Court: Yes.

Mr. Andersen: I show you a duplicate of Exhibit No. 1. Now, at the time that that load collapsed, did it or did it not cover the steampipe cover which is shown in that picture?

A. It covered it, I would say, completely, almost completely, except one of the beams—if I remember correctly, it hung on the edge of the hatch coamings of No. 1 and No. 2 hatches, and under that, of course, it was wrenched with all this reinforcing steel.

Q. Did these beams cover any portion of the hatches No. 1 and No. 2?

A. Yes, it covered them completely. As a matter of fact, the carpenter could not get in——

Mr. Burns: I will object to his conclusion.

Mr. Andersen: All right.

Q. After the load collapsed, could the hatch covers of hatches Nos. 1 and 2 be removed without first removing part of the steel?

Mr. Burns: Objected to as calling for a conclusion.

The Court: I think it does.

Mr. Andersen: Yes, it does, I am sorry.

Q. After the vessel arrived at Honolulu did they

(Testimony of Charles Hansen.)

remove the steel before they took off the hatch covers?

Mr. Burns: I object to this as hearsay. He said he was not there.

Mr. Andersen: Q. Did you go to the hospital before they took off the hatch covers?

A. I did.

Q. That is quite all right. Now, I direct your attention to the mast house shown in the picture. Might I show your Honor the [8] other picture? They are duplicates of each other, but the mast house is there. That is looking at the starboard side of the ship?

A. That is looking forward.

Q. A day or so before you arrived at Honolulu the whole crew was turned to to top the booms, was it not?

A. The day before we arrived in Honolulu, yes.

Q. And were you directed to do any particular task in this operation of topping the booms?

A. The seamen are not directed to do those things, they usually gravitate to them. In other words, the most important jobs are taken by the able bodied seamen. It is not customary for a mate to say, "You take this," or "You take that," except on special jobs.

Mr. Burns: I will ask that this all go out as not responsive, it is not responsive to any question.

The Court: Denied.

Mr. Andersen: Q. This particular operation that you assumed was what—what were you doing in this operation?

(Testimony of Charles Hansen.)

A. Starting from when we were turned to?

Q. Yes.

A. We were turned to about 1:15 or about 1:30, and of course I turned to on the starboard side.

Q. In other words, you were standing on the mast house shown in the picture on the starboard side, ready to slack away the line attached to one of the booms. That is what you were doing? A. Yes.

Q. I show you another photograph, which is marked Plaintiff's Exhibit For Identification No. 1, and ask you if this picture shows the starboard side of the forward mast house, and if it shows the cleat that you were working on. A. Yes.

Q. Is that the cleat, there?

A. Yes, that is the cleat.

Q. In other words, on that picture you were standing in what [9] position with reference to that cleat? Where were you standing in reference to that cleat?

A. I was standing astern of the cleat, I had to face the operation.

Q. In other words, the boom that was being raised was forward of that mast house?

A. Was forward of the mast house, and I was standing astern of the cleat.

Q. So when you were standing there to slack away on that line you were standing aft of the cleat facing forward? A. Yes.

Mr. Andersen: May I offer this in evidence?

The Court: Admitted.

(Testimony of Charles Hansen.)

(The photograph was marked "Plaintiff's Exhibit 2.")

Mr. Andersen: Q. Now, the lines were all set and the blocks were all set, and the operation was commenced, was it? A. Yes.

Q. To top the booms? A. Yes.

Q. And the signal was given to top the booms?

A. Yes.

Q. And I assume that Mr. Rosen gave the signal to top all the booms, that is, to heave away?

A. Yes, he was in charge of the operation.

Q. After the signal was given and they started to heave away, what happened?

A. While I was standing at that cleat, when the boom was raised to a height of about four to six feet it became fouled in a signal halyard up forward.

Q. What became fouled?

A. The booms, themselves.

Q. Became fouled? A. Yes.

Q. When they became fouled did the operation stop?

A. The order was to stop the booms, yes; as a matter of fact, on the fouling it automatically stopped.

Q. Then for a short period of time I assume that the booms were held in this position about four to six feet in the air, and the [10] winches were stopped, and I further assume that proper steps were taken to eliminate this fouling on the port side?

(Testimony of Charles Hansen.)

Mr. Burns: I will ask that he not lead the witness, and let him testify.

The Court: Objection sustained.

Mr. Andersen: Q. Then after the booms were stopped at that point, what was done at that time, if you know, so far as the port side was concerned?

A. It would be merely an assumption on my part.

Q. Then approximately how long was the operation stopped at this point?

A. I would say a few minutes.

Q. A few minutes? A. Yes.

Q. Now, directing your attention to the picture showing the starboard side of the mast house, there, and showing that cleat, were any of the other blocks shown on that starboard side of the mast house being used in this operation?

A. Yes, there was a snatch block which was attached to the starboard rigging as a fair lead, because of the deck load, and ordinarily there is a steady strain on that snatch block, which is attached to that rigging, by what is called a guy. Now, when the boom stops and starts swinging with the ship, as the ship was rolling, it had a tendency to jerk that snatch block, and that is exactly what it was doing.

Q. Wait a minute, I do not believe we are talking about the same thing. I am talking about a block on the side of the mast house, not the rigging.

A. I am sorry.

Q. In other words, was there a block in use in this operation near this cleat by which you were standing?

(Testimony of Charles Hansen.)

A. Yes, it was a snatch block attached to the mast house.

Q. In the picture that you have there, does the hook show upon [11] which the block was attached?

A. This picture does not show it.

Q. Does this photograph, which is Plaintiff's Exhibit No. 2, show the block, or show the hook upon which the block was attached on the side of the mast house?

A. Yes, it does.

Q. Can you mark it there?

The Court: Isn't it marked?

Mr. Andersen: Not as yet.

Q. Would you mark it?

A. This is the snatch block.

Q. Just put an "X" there. That is the toplift snatch block.

Mr. Burns: That is the block that he got his hand in?

Mr. Andersen: Yes.

Q. During the time that this operation stopped, for the several minutes that you mentioned, what did you do?

A. The boatswain directed my attention to the snatch block that was on the rigging.

Q. Just a minute. You were standing right alongside of this mast house?

A. Yes, standing by the cleat.

Q. Now, this rigging that you are talking about, where was that, and how far away was it?

A. The rigging shown in this picture, it would

(Testimony of Charles Hansen.)

be an estimate of distance, I would say probably eight to ten feet.

Q. Eight to ten feet?

A. Yes, a little bit forward of the mast house.

Q. In other words, you went over to this block that was attached to the rigging?

A. To the rigging.

Q. Why did you go there?

A. I went there—the boatswain called my attention to the block, and as a matter of fact, it is second nature with a sailor, when he sees something——

The Court: Just answer the question.

A. I went to the snatch block and put a stopper on.

Q. What do you mean by a “stopper”?

A. A stopper is a line that [12] you put under the snatch block to keep it from sliding down, to keep the topping lift from chafing the deck load.

Mr. Andersen: Q. In order to get there, how did you get there?

A. I had to climb over the deckload.

Q. What was the condition of the deckload at the time you crawled over the deckload?

A. It was clear up against the hatch coaming, it covered the guard that is shown in the picture, and it was very dangerous.

Q. Was it even, or was it rough?

A. It was rough, very rough, and there was a lot of grease over it.

The Court: Q. Over what?

(Testimony of Charles Hansen.)

A. Over the deckload.

Q. Over the steel? A. Yes.

Q. On top of the steel?

A. On top of the steel.

Mr. Andersen: Q. Now, after you put this stopper on the block which was on the rigging, what did you do?

A. Why, I was on my way back to the cleat.

Q. Now, just a moment: While you were on your way back to the cleat, tell us in your own words just what happened.

A. I was on my way back to the cleat——

The Court: Q. From where?

A. From the outboard rigging.

Mr. Andersen: Q. You stated something about the boatswain calling your attention to something.

A. Yes.

Q. What did he say?

A. He said, "Hansen, stop that snatch block, put a stopper on that snatch block.

Q. You went out there and put a stopper on it?

A. Yes.

Q. Now, you are on your way back.

A. I am on my way back to my former position at the cleat.

Q. That, you say, was a distance of about eight feet?

A. I would presume so, eight or ten feet.

Q. Point out that distance in this court-room.

A. From this desk [13] to those windows.

(Testimony of Charles Hansen.)

Q. You say it would be about that distance you were coming back?

A. Yes, I was coming back to my position.

Q. At the cleat?

A. Yes, and on my way back, and that snatch block in the picture stretched out from the mast house about two feet—I was coming back, and this line coming across from that snatch block on the rigging, coming across to the snatch block on the mast house, stretched out, and the ship was rolling, and I slipped and fell, and necessarily I put my hand out to grab this line, this topping line, which was leading to the snatch block, and my hand was on it, and then they started heaving away, and my hand went right into the snatch block, and I pulled it out.

Q. That is how it happened, was it?

A. Yes.

Q. At the time that happened were you right at the side of the load, or middle of the load?

A. I was near the edge.

Q. To get down into this hole?

A. To get down into this hole.

Q. That is the hole shown in Exhibit No. 1?

A. Yes.

Q. In other words, you were going to get down on the deck and stand aft of the cleat? A. Yes.

Q. Now, you say your hand was drawn into the block. A. Drawn into the block.

Q. What happened to your hand at that time?

A. I pulled it out, I had my glove on, and I took

(Testimony of Charles Hansen.)

my glove off, and as a matter of fact when it went in I don't know whether I yelled, but I took my glove off, and my finger was hanging off, and these fingers here were all crushed, I realized that I had had an accident, so I proceeded to the bridge from there, I did not stop, I just simply went up to the bridge.

Q. How long were you treated at the hospital for your hand?

A. I was treated in Honolulu at the Queen's Hospital, an in-patient [14] for three weeks.

Q. An in-patient? A. Yes.

Q. Then you came to San Francisco?

A. No, I was an out-patient there then for, I believe, five weeks, and then I received a discharge, recommending——

Q. All I want to know is how long you were there.

A. About two month.

Q. Then you came to San Francisco?

A. Then I came to San Francisco.

Q. How long were you treated at the hospital here, at the Marine Hospital?

A. I think it was from March to about the latter part of August.

Q. From March until about August?

A. Approximately.

Q. After August, sometime, you went back to sea again?

A. I made two trips on the "Mariposa."

Q. What was the condition of your hand right after this accident? Will you explain to the Court

(Testimony of Charles Hansen.)

the condition of your hand right after the accident?

A. Right after the accident?

Q. Yes.

A. This tip of the finger was amputated, the bone was exposed, these fingers were all crushed, I didn't know just what the exact condition was until we had X-rays, the X-rays will show that.

Q. They were all crushed?

A. They were all crushed.

Q. Were the bones broken?

A. Well, the X-rays showed that, I did not know it at the time, all the bones were broken, of these fingers, here.

Mr. Burns: I suggest, inasmuch as we have the hospital records available, that the hospital records show the extent of the injuries.

Mr. Anderson: Q. Was it very painful?

A. Yes, it was. [15] As a matter of fact, I believe in Honolulu the doctor told the nurse to give me some——

Q. Was it painful? A. It was painful.

Q. What is the condition of your hand at the present time?

A. At the present time I feel I have lost a lot of grip, I tested it when I was on the "Mariposa," and I can't bend this finger completely yet.

Q. That is the middle finger?

A. Yes, this finger I can bend just that far.

(Testimony of Charles Hansen.)

Q. Approximately how much loss of strength have you had in your hand?

A. I could not positively say how much I have lost, but I noticed on the "Mariposa," at the time when we started painting the ship, and I got on the boatswain's chair, and ordinarily you hold yourself with your left hand, and make yourself fast with the right hand, and I couldn't do it, and at this time, I had to have someone put the boatswain chair on.

Q. Does that interfere with your work as a seaman?

A. I would hesitate to trust it entirely, not only on my own behalf, but on behalf of my shipmates.

Q. With respect to oil aboard the ship, I will show you Plaintiff's Exhibit No. 5, that is a picture of the cleat. I will show you this picture. Can you direct my attention to any oil there?

A. Yes, I can, there is some oil here, on the winch body.

The Court: Q. You did not slip on the winch body?

A. No, but we were working around there at all times.

M. Andersen: Q. That cleat by which you were working was approximately how far from that winch? A. You can see it right here.

Q. In other words, just a few feet?

A. Yes. [16]

The Court: Q. This is the cleat?

A. This is the cleat.

(Testimony of Charles Hansen.)

Q. You can see that, can't you?

A. Yes, I see that.

Q. You say the oil was where?

A. The grease comes off the machine there, and it was around there.

Q. Gathered around where?

A. On the floor.

Q. That is where you were standing?

A. Yes.

Mr. Andersen: Q. Generally, there was oil all around where you were working, and on the deck load?

A. Yes, walking around there would carry it around.

Q. I will show you—I do not believe this is in evidence—another picture. Can you identify that picture, please?

A. Yes, that is a close-up of the oil that is shown in that picture of the grease.

Q. In the last exhibit? A. Yes.

Mr. Andersen: I will offer this in evidence as Plaintiff's Exhibit next in order.

Mr. Burns: Objected to on the ground that it does not show the condition at the time of the accident, but a few days after.

The Court: Overruled.

(The photograph was marked "Plaintiff's Exhibit 3.")

Mr. Andersen: Q. You were not on the vessel at that time, were you? A. No.

(Testimony of Charles Hansen.)

Q. In other words, as soon as the ship got to Honolulu you were taken to the hospital?

A. I went to the hospital.

Mr. Andersen: You may cross-examine.

Cross-Examination

Mr. Burns: Q. Now, Mr. Hansen, what was your watch when you were on the ship?

A. 4:00 to 8:00.

Q. 4:00 to 8:00 watch? A. Yes.

Q. And when the deck cargo shifted on the night that you left [17] San Francisco, did you see it shift?

A. I did not see it shift.

Q. So, when you testified that the deck cargo collapsed, that was your conclusion or description of it, isn't that correct? A. Yes.

The Court: Q. Did you see that deck cargo before? A. Yes.

Mr. Burns: I am not contending he did not see it before, or after.

The Court: What is the fact, did the cargo shift?

Mr. Burns: The cargo shifted, but I deny that it collapsed. I do not like the word "collapsed."

The Court: What do you mean when you say it collapsed?

A. I have made a chart to give an idea of it.

Q. You mean you made a drawing?

A. Yes, I made this. This gives a general idea. It is not according to scale, but that is the way these beams were stacked.

(Testimony of Charles Hansen.)

Q. You have a diagram showing the beams on the port side?

A. These beams were stacked in this manner the night that we sailed. There were only two chain lashings, there were no braces between them. In other words, my idea in drawing this was to give you an idea of how these beams that were shown in the photograph were stacked up, they were all stacked up that way.

Q. What do you mean, on end?

A. Yes, on end.

Mr. Burns: Q. This is a cross section?

A. Yes, running forward. If you look straight down you can see this is the anchor windlass, this is the No. 1 hatch, this is the No. 2 hatch, and this is where I fell, and this is the way the cargo was before it collapsed. On the starboard side it was stacked the same way, with reinforcing steel. That was the condition of the load which caused the collapse of the load at 8:00 o'clock [18] that night, there was nothing to hold it except these lashings, and these turnbuckles bent.

The Court: Q. What do you call that steel that was on board?

A. I would call that construction steel.

Mr. Andersen: It was I-beams.

Mr. Burns: It was I-beams for construction work.

The Court: Q. How long were those beams?

A. About 50 feet, your Honor.

(Testimony of Charles Hansen.)

Q. And do you know what they weighed?

A. About two and a half tons. They were simply balanced there, they had to go.

Q. When did you draw this?

A. At my home.

Q. From memory?

A. Yes, from memory. I went aboard the ship the last time she was here and I tried to get the proportions of this, and this gives you a general idea. This is the way these beams were, they were telescoped.

Mr. Andersen: Pointing to Exhibit No. 1.

A. That is the way the beams were originally stacked, like that, and there is another exhibit that shows how these beams came over, and that is the reason I used the word "collapsed."

Mr. Burns: Q. Now, referring to Plaintiff's Exhibit No. 1, you say this shows how they were originally stacked? A. Yes.

Q. But you also testified it does not show them after they shifted on January 8, is that right?

A. After they shifted?

Q. At the time of your accident the beams did not look this way, as they do in No. 1? Do you understand what I mean? A. No.

Q. You stated that the beams running fore-and-aft in the center part of Plaintiff's Exhibit 1 was the way the beams were before they shifted.

A. This is the way the beams were.

Q. I am talking about this photograph.

(Testimony of Charles Hansen.)

A. Oh, no, the other [19] photograph.

Q. No, the one I have in my hand. You have just stated to his Honor that these beams running fore-and-aft in the center depicted the way they were standing before they shifted.

A. In this particular stack, here.

Q. In that particular stack?

A. In that particular stack, and that is the way the beams were stacked.

Q. At the time of your accident the beams you testified were not in the position that they are now?

A. No, they had all collapsed.

Q. They had gone over onto the steam guard?

A. They had shifted over on the steam guard and both No. 1 and 2 hatches.

Q. So that although you don't know you presume that when they got into port these beams were pulled off the steam guard, is that correct?

A. I have been told that, it is hearsay, I am assuming that.

Q. You are assuming that? A. Yes.

Q. Now, Mr. Hansen, directing your attention to the day of the accident, you were stationed at the starboard side of the mast house, there, ready to slack away on No. 1 starboard guy, is that correct?

A. Correct.

Q. You testified, assuming that this is the mast house to my left, here, that you had hold of the guy in both hands just prior to the beginning of this operation, and the guy was wrapped around a cleat

(Testimony of Charles Hansen.)

several times, is that correct? A. No.

Q. How were you standing?

A. I was standing astern of that cleat.

Q. Astern of the cleat?

A. Whether I had both hands on it, or not, I don't remember.

Q. You don't remember? A. No. [20]

Q. You may just have had one hand on. I am asking you, did you have one or two hands?

A. I don't remember.

Q. Is one hand sufficient to slack away on that guy? A. Not to slack away, no.

Q. It is not sufficient to slack away?

A. No.

Q. You need two hands to slack away?

A. Yes.

Q. If you were just standing there waiting you just put a hand on it?

A. No, that is not my answer.

Q. But at this time you don't know whether you had one or two hands on it? A. At what time?

Q. Just before the operation started, on the day of the accident.

A. I don't remember whether I had one or two hands.

Q. Now, you are about a foot or about a foot and a half astern, or aft of this cleat?

A. I was standing in a vertical position, and I presume I would be a foot and a half from the cleat.

Q. About that? A. Yes.

(Testimony of Charles Hansen.)

Q. And you were facing forward?

A. I was facing the operation.

Q. That is, facing forward?

A. Facing forward, that is right.

Q. Now, you say that operation started.

A. When everything was in order the chief mate started the operation.

Q. What did he do, say something—"Heave away"?

A. "Heave away"?

Q. That is customary?

A. That is customary.

Q. So, you were standing there, not remembering whether you had one or two hands on this guy, and you were facing forward, and you were about a foot and a half back of the guy, that is, aft of it, you were in your place, is that right?

A. I was in my place.

Q. You heard the mate say "Heave away"?

A. I did not hear him; as a matter of fact, I don't know whether I saw the mate, but [21] the man that pays more attention to the mate when the "Heave away" signal is given is the man on the winch.

Q. Didn't you testify you heard the mate say "Heave away"?

A. I would say I don't remember.

Q. You don't remember?

A. As a matter of fact, it is unimportant to me.

Q. Did the boatswain say anything?

(Testimony of Charles Hansen.)

A. The boatswain was working, the same as we were.

Q. Did he say anything? A. No.

Q. He did not say anything? A. No.

Q. After the mate said, "Heave away," the boatswain started the winches, is that correct?

A. That is correct.

Q. And then as soon as the boatswain started the winches both the No. 1 starboard boom and the No. 1 port boom started to come out of their cradles, is that right? A. Yes.

Q. These booms, for the information of the Court, because I do not think we have a picture of it here, the port and starboard booms are attached to the mast, which is stuck in this mast house that he is standing next to.

A. These booms are attached to the mast house?

Q. Attached to the mast house. A. Yes.

Q. These booms are generally parallel when they are at rest, is that correct?

A. On the "Mauna Lei"?

Q. On a ship.

A. On the "Mauna Lei," pretty close.

Q. They both lay forward and aft? A. Yes.

Q. They are called No. 1 port and starboard booms? A. They are.

Q. The purpose of this operation was to get them up so that they were in a perpendicular position, is that right?

A. That is correct.

(Testimony of Charles Hansen.)

Q. Preparatory to getting into Honolulu so you could discharge [22] cargo?

A. The longshoremen could.

Q. And when the booms got up a few feet, five or ten feet, something happened, is that right?

A. That is right.

Q. What happened?

A. I believe the booms got foul of a signal halyard.

Q. What do you mean by that, the booms got foul in what way?

A. With the signal halyard.

Q. What is that?

A. The signal halyard is a halyard usually used for the anchor light.

Q. You will have to explain a little more than that to make it clear.

A. It is attached to the forestay. This signal halyard is attached to a part of that forestay almost above, or rather a little bit aft of the anchor windlass.

Q. All right, just a minute: I do not like to interrupt you in your description, but I do not understand it very well. I am not a sailor. Perhaps the Judge knows better than I do, but to make it simple, was it the end of the boom, the top of the boom that got foul of some of the lines that are attached to the ship?

A. I will have to explain that to you. On these booms, as any seaman knows, on the end of these

(Testimony of Charles Hansen.)

booms there are outboard guys attached to the booms close to the end. As I said before, I am not sure what happened, except I am assuming now that this signal halyard is what fouled the booms. It happens on a lot of ships.

Q. Is that halyard attached to the end of the boom?

A. No, it is attached to the forestay and running right down to the hatch.

Q. You don't know for sure, but you assume that this signal halyard was fouled?

A. I am quite sure they were afoul of the boom.

Q. Were they afoul of both booms, or one boom?

A. Both booms [23] were affected.

Q. Were they afoul on both booms?

A. I don't remember.

Q. You don't remember? A. No.

Q. Were the booms stopped?

A. They were stopped as soon as they became foul.

Q. That is what I mean. How high were they off the cradle?

A. I would say between four and six feet.

Q. Now, after they were stopped what happened?

A. Well, naturally, the boatswain called my attention to the snatch block in the rigging.

Q. On which side of the ship?

A. On the starboard side, where I was working.

Q. On the same side you were working?

A. On the same side I was working.

(Testimony of Charles Hansen.)

Q. What did the boatswain say to you?

A. He said, "Hansen, I think you ought to stop that. I thought of that at the same time, simultaneously.

Q. Was there anything happened to the snatch block?

A. Sure, it was slipping a little.

Q. That block was slipping a little? A. Yes.

Q. Down on the rigging?

A. Not all the way down.

Q. How much?

A. It started to slip, I could not say how much, possibly a few inches.

Q. A few inches?

A. Yes, I could not recall exactly.

Q. You say it had started to slip down on the rigging? A. Yes.

Q. Did they have a snatch block like that on the port side?

A. Yes, the same thing.

Q. Had the snatch block on the port side slipped?

A. I don't know anything about the port side.

Q. You don't know?

A. I am presuming. [24]

Q. You could not see from there?

A. No, I could not.

Q. You say that the snatch block on the starboard side slipped a few inches? A. A few inches.

Q. And then you walked over or crawled over the deckload, is that right?

(Testimony of Charles Hansen.)

A. That is correct, and I was proceeding back to my position at the cleat.

Q. Just a minute, we are at the mast house, and you walked over the deckload?

A. Yes, I crawled over the deckload and went over the rigging with the piece of line, and put a stopper on the snatchblock.

Q. By a stopper, you mean you snubbed it up?

A. I stopped it, to keep it from slipping down.

Q. How far was it from where you had been standing a couple of minutes before, that is, when you were standing by the cleat, to where you worked on the snatch block?

A. I would say about eight to ten feet.

Q. That is the distance from where you stood a few minutes before? A. Yes.

Q. Then after you finished fixing the snatch block you started back over the same route, is that correct?

A. Not over the same route.

Q. You did not take the same route?

A. No, I did not.

Q. You took a different route?

A. Might I explain what route I took?

Q. You took a different route?

A. Yes, I did take a different route.

Q. What different route did you take?

A. I can explain that to you on the diagram. I went on a direct route when I went over, and when I came back I came back toward the snatch block on the mast house. [25]

(Testimony of Charles Hansen.)

Q. So you went over in a direct line, and you came back over a different path? A. Yes.

Q. Towards the snatch block on the mast house?

A. Yes.

Q. And you say that you got to the snatch block, or, rather, you got to the edge of the deck load, there, and you slipped, is that right?

A. No, that is not right.

Q. All right, where were you when you slipped?

A. I was slipping in walking over that deck load, but just as I was near this hole, this edge, the ship was rolling, and I was thrown into this topping lift. I fell into it.

Q. Just before your hand dropped onto the topping lift at that point, how far were you from the point that you had been when you were slacking away on that guy?

A. From the cleat up to the level of the deck load the distance would be a few feet.

Q. How many?

A. Well, I couldn't say exactly. The photograph will give you just as good an idea as I could, probably.

Q. From your recollection, it was about what?

A. Between two and three feet, approximately.

Q. On a plane, on a level? A. Yes.

Q. How high was this deckload off the deck at that point?

A. As I said before, I believe between five and six feet.

(Testimony of Charles Hansen.)

Q. Between five and six feet? A. Maybe.

Q. And the steam guards are about 18 inches off the deck, aren't they?

A. I don't remember, I would say approximately.

Q. They are more or less uniform on all ships, aren't they, these steam guards?

A. They are not uniform. I would say these particular steam guards were approximately one foot, or say twelve to eighteen inches.

Q. Now, on the way back you say you called out something—as you started back, or just before you started back? [26]

A. I believe I said, "Hold everything."

Q. You called that out?

A. Who was listening, I don't remember.

Q. I asked you if you called that out?

A. I am quite sure.

Q. When you got back, or just before you slipped, did you hear the boatswain say anything?

A. I was not interested in the boatswain, no.

Q. You did not? A. No.

Q. Did you hear the mate say anything?

A. Just before I slipped?

Q. Yes. A. No.

Q. Did you hear the mate say, "Heave away"?

A. No.

Q. Did you hear him say "All clear," or anything to that effect? A. No.

(Testimony of Charles Hansen.)

Q. Then you slipped, and you say that your hand, your left hand went on this topping lift, is that right?

A. Well, instantaneously I grabbed it.

Q. I did not ask you that. It went on it?

A. It went on it.

Q. And at that instant the topping lift started, and your hand was drawn into this block?

A. Yes.

Q. Is that right? A. Yes.

Q. Do you know how far your hand was from the sheave of the block where your hand hit it? If you don't know, say you don't know.

A. Well, I don't remember exactly.

Q. Well, was it three or four feet, or what, to the best of your recollection?

A. To the best of my recollection, I would say it was within a foot.

Q. Now, as soon as your hand got in there you jerked it out, or they stopped the winches and you jerked it out, is that it? A. Yes.

Q. What happened when your hand got in there, did you holler?

A. I don't remember what I did, it happened so quickly. I remem- [27] ber this, as soon as my hand went in there I pulled it out and apparently I pulled the glove off, and I saw my finger, and I said, "I am hurt."

Q. Then you went up to the bridge?

A. From there I proceeded on up to the bridge.

(Testimony of Charles Hansen.)

Q. And you saw the officer there, and then you saw the captain, is that correct? A. Yes.

Q. Then you saw the purser and he gave you first aid, is that correct? A. Yes.

Q. Then the next day the ship arrived in Honolulu, and you were taken to the hospital?

A. I was not taken, I went.

Q. You walked?

A. I did not even have my certificate.

Q. But you got in the hospital?

A. I got in the hospital.

Q. You are absolutely certain, are you, Mr. Hansen, that you were not standing on the deck, a couple of feet, or a foot or two, on the starboard side of the mast house just before you were injured?

A. Positive.

Q. You are certain also that you never arrived back to that point from your work at the starboard rigging? A. Starboard rigging?

Q. Yes. A. Positive.

Q. You never got back there?

A. I was starting back there.

Q. You never got back there?

A. I never got back there.

Q. Mr. Hansen, this grease that you see in one of these photographs, you were not there at the time that photograph was taken, Exhibit 3?

A. No.

Q. You were not there at the time this photograph was taken, were you? A. No.

(Testimony of Charles Hansen.)

Q. So you didn't see the winch at the time this photograph was taken? A. No.

Q. You say you have been on ships for a good number of years, [28] have you? A. Yes.

Q. Do you also say that it is unusual to have some grease under the winches?

A. Yes, it is unusual.

Q. It is unusual?

A. In that amount, I will have to qualify that.

Q. This amount of grease that is shown under that winch is an unusual amount, is that correct?

A. Unusual amount.

Q. When the ship enters port the longshoremen work the winches, don't they? A. Yes.

Q. Before the longshoremen work the winches they get them in condition to work, don't they?

A. The deck engineer.

Q. And sometimes they are worked by the longshoremen for two or three hours, aren't they, at a stretch, or all day?

A. Maybe all day and night.

Q. And when the deck engineer is getting them ready to work he oils and greases them, doesn't he?

A. At all times, that is, at the necessary time.

Q. And the winches on the "Mauna Lei" and other ships are sprayed with sea spray when you are out at sea, aren't they, if it is a rough sea?

A. Yes.

Q. If you take any water over the bow the sea water washes over the winch, isn't that right?

(Testimony of Charles Hansen.)

A. Lots of times it does.

Q. Now, by the way, who took these pictures for you? A. Charles Rasmussen.

Q. Who is he? He was another member of the crew? A. Yes.

Q. And you asked him to take them for you, I presume? A. Yes, I did, after the accident.

Q. Of course, after the accident. Now, Mr. Hansen, you went back to work, did you not, on the "Mariposa" in September, sometime, of last year?

A. That is right.

Q. And you worked steadily on that ship until January 5, is that [29] right? A. Yes.

Q. And you got off, or signed off the ship at that time in order to be here for this case, isn't that true?

A. Yes.

Q. You have been able to get work between those dates if you wanted to, haven't you?

A. I have tried for certain positions.

Q. There is plenty of work available for men who want to sail? A. Yes, plenty of work.

Q. You were also paid your maintenance after this accident, weren't you?

Mr. Andersen: There is a stipulation as to that.

Mr. Burns: Let us bring it out.

Q. You were paid \$298 in maintenance, were you not?

A. I don't know what it amounted to, \$2 a day.

Q. \$2 a day for all of the time you were out of a vessel? A. Yes.

(Testimony of Charles Hansen.)

Mr. Burns: Will you stipulate that \$298 was paid him in maintenance?

Mr. Andersen: I will stipulate to that.

Mr. Burns: Q. You were also paid \$46.75, which was the amount of your wages to the end of the voyage? A. Yes.

Q. In other words, you signed on for a voyage from San Francisco to Honolulu and return, and you left the ship at Honolulu because of this injury, and you were paid wages for the balance of that voyage? A. Yes.

Q. You were also brought back to San Francisco by the Matson Company?

A. That is correct.

Q. Now, isn't it true, directing your attention to the day of the accident, isn't it true, Mr. Hansen, that you never moved from your position by the cleat by the mast house, there, at all—that is, during the fifteen or twenty minutes that this operation took place? A. I don't understand. [30]

Q. Directing your attention to the day of the accident, isn't it a fact that during all of the time that these booms were being fixed, and up to the time that you suffered your accident, isn't it true that you never moved from your position there at the mast house on the starboard side?

A. That I did not move from my position?

Q. Yes.

A. I don't understand that question.

Q. You deny that, don't you?

(Testimony of Charles Hansen.)

A. I don't understand the question, will you put that question different?

Q. I don't know how I can make it any clearer.

A. I don't understand the question.

Q. Isn't it a fact that you did not go over to fix the block on the starboard rigging?

A. That I did not, you say?

Q. Yes.

A. When the boom started swinging?

Q. At any time?

A. I went over to the starboard rigging.

The Court: Q. He said you did not.

A. I did, of course I went over there.

Mr. Burns: Q. You also deny that you were standing during that period of time by the cleat, there? A. I deny that, that is correct.

Q. Have you ever had any prior injuries?

Mr. Andersen: Just a moment. I will object to that as incompetent, irrelevant, and incompetent.

The Court: Overruled.

Q. Have you ever had any prior accidents?

A. Two.

Q. Were you injured in both of them?

A. I had double hernia in one.

Mr. Burns: Q. You say that you had two prior injuries at sea? A. Yes.

Q. Was that within the last few years?

A. Yes. Those were all I [31] had in 29 years.

Q. I will ask you, Mr. Hansen, to read on page 35, from line 12 to——

(Testimony of Charles Hansen.)

The Court: What is that?

Mr. Burns: This is the deposition of Charles Hansen, the plaintiff, which was taken on March 20, 1942. Read from line 12 to 15; read them to yourself.

A. Well, I must have misunderstood the question.

Q. Just a moment.

A. The way the question was put here——

Q. Just a moment. I will read it to you, and then you may explain. Reading from page 35, line 12 of the deposition of Charles Hansen, taken on Friday, March 20, 1942:

“Q. Have you ever had any injury to that hand before? A. Never.

“Q. Now, have you ever had any other injuries before this particular one on January 15, 1941? A. No, sir.

“Q. Never had any, at all? A. No.”

Now, then, did you so testify?

A. I must have testified that way.

Q. You do not deny that you so testified, do you?

A. Well, I don't remember about that.

Mr. Burns: Counsel, may I have a stipulation as to that?

Mr. Andersen: I will stipulate that those questions were asked and those answers were given.

Mr. Burns: Q. Those answers are not correct, are they, Mr. Hansen?

(Testimony of Charles Hansen.)

A. That first answer regarding my hand is correct.

Q. That is correct? A. Yes.

Q. But the other answers to the other questions are not correct?

A. The other two answers are incorrect, the way it reads.

Q. This other accident you refer to happened on July 28, 1940, on the "Monterey," isn't that correct?

A. I believe it was, yes. [32]

Q. And you fell, or alleged that you fell off the mast and hurt your back and had a hernia, isn't that right?

A. Are you combining the two accidents?

Q. No. The first accident was on May 15, 1939, is that right? A. What accident was that?

Q. That is the one on the "Matsonia."

A. I had a double hernia.

Q. And that action was also filed in this court, was it not?

A. That was settled out of court. I don't know whether it was filed here in court.

Q. Wasn't that action filed under the title of Charles Hansen v. Matson Navigation Company, No. 21-253-L, District Court of the United States, Northern District of California, Southern Division?

A. I left it in the hands of the attorney, I don't know about it.

Q. I will show you a copy, and ask you if the verification on the back of this case refreshes your

(Testimony of Charles Hansen.)

memory. That is a copy. Who was your attorney—Maxwell Peyser?

A. No, I don't think so. I forget.

Q. You forget Maxwell Peyser?

A. That is right.

Q. You remember also, Mr. Hansen, that in that case you alleged in paragraph 5 that the plaintiff slipped on grease on the deck?

Mr. Andersen: May it please the Court, I think I will object to this as immaterial, irrelevant, and incompetent.

The Court: Overruled.

Mr. Burns: I will read part of that allegation to refresh your memory:

“And while the said plaintiff was in the act of trimming a ventilator on the said steamship ‘Matsonia,’ these defendants carelessly and negligently caused and permitted grease to be placed and to remain upon the deck wherein the plaintiff was en- [33] gaged in the performance of his duty, and while said plaintiff was working as aforesaid.

“That by reason of the said carelessness and negligence of these defendants, and as a proximate result thereof, this plaintiff slipped on said grease and upon the said deck wherein said plaintiff was engaged in his work, and did thereupon sustain a severe personal injury, to wit, an inguinal hernia, both direct and lateral.”

Do you remember that?

A. Yes.

(Testimony of Charles Hansen.)

Q. That action was shortly thereafter settled, isn't that correct? A. It was settled.

Q. Now, the second accident was on July 28, 1940, while you were on the "Monterey"?

A. That is correct.

Q. Is that right? A. That is correct.

Q. At that time you fell off a mast and hurt your back? A. Yes, the boom.

Q. You claimed at that time that there was a contusion, and the X-ray at the Marine Hospital showed the fracture of the third, fourth and fifth members of the lumbar side, is that correct?

A. That is correct.

Q. That case was settled for \$200, plus maintenance, is that correct?

A. I believe it was.

Q. There was no suit filed?

A. No suit filed.

Q. By the way, at the time, or the day of your accident, was there another sailor stationed on the starboard side of the ship, that is, at or about the time you were injured?

A. On the starboard side of the ship?

Q. Yes; to make it more definite, was there a sailor stationed somewhere near where that snatch block on the starboard side of the rigging was that you fixed?

A. There was a sailor on the [34] gypsy head.

Q. That is on the winch?

(Testimony of Charles Hansen.)

A. That is on the winch.

Q. I mean over by the starboard rail, the rigging?

A. No.

Q. There was no sailor there?

A. There was no sailor there.

Q. Do you know whether there was a sailor over there, a little forward of that?

A. No. I had an ordinary seaman help me there, but he had gone forward to take care of the inboard boom, I mean the inboard guy on the forecastle head.

Q. How far was he from that snatch block?

A. Oh, he was up here, I would say probably forty or fifty feet—I would say about forty feet, I did not exactly measure it.

Mr. Burns: That is all.

The Court: We will take a recess for five minutes.

(After recess:)

Mr. Andersen: I would like to call Mr. Jones. I have a little redirect examination of Mr. Hansen, but I would like to call the doctor out of order.

The Court: I wish you would call the Doctor, I have seen him waiting.

Mr. Andersen: Will you take the stand, Dr. Jones?

ROBERT A. JONES,

Called for the Plaintiff; Sworn.

Mr. Andersen: Q. You are a medical doctor?

A. Yes.

Mr. Andersen: You will stipulate to the qualifications of Dr. Jones, will you not, Mr. Burns?

Mr. Burns: Yes.

Mr. Andersen: Q. Dr. Jones, in your capacity as a medical officer in the Marine Hospital, you had occasion to either treat or examine, or keep the records relating to Mr. Hansen's left hand? [35]

A. Yes.

Q. And you have X-rays and certain records that you brought with you? A. Yes.

Q. With respect to the left hand, what do the X-rays show?

A. The X-rays show an ununited fracture of the tip of the third phalanx of the third left metacarpal bones, including a traumatic amputation of the tip of the third phalanx of the fourth left metacarpal bones, together with an ununited fracture of the base of the third phalanx of the second left metacarpal bones, including an ununited fracture of the second phalanx of the left thumb or first left metacarpal bone?

The Court: How many fingers were broken—three? A. Three, and a thumb.

Mr. Andersen: Q. How many fractures were there altogether?

The Court: That would be four.

(Testimony of Robert A. Jones.)

A. They were comminuted, that is, some of them in several pieces.

Mr. Andersen: Q. Comminuted fractures?

A. Yes.

Q. How many fingers had comminuted fractures?

A. I will have to look at the film. The X-ray man did not state that.

Q. Didn't he make any notes?

A. He made notes, but did not state there. The fracture of the second is comminuted. The middle finger is comminuted, and the ring finger shows an amputation of the tip of the third phalanx, and the thumb shows a fracture with a solid separation of the fracture. I would not call the fracture of the distal phalanx comminuted.

Q. What was the type of wound that he had to his hand?

A. I could not state that, because, as I remember, when I saw him at the Marine Hospital his wound had healed.

Q. His wound had healed? A. Yes.

Q. He was an outpatient at the hospital from March 21, 1941, until [36] August 28, 1941, was he?

A. That is correct.

Q. What was his condition upon discharge?

A. I could read my notes of my last examination, which was August 27:

“A very good result has been obtained. Can flex fingers completely to palm. The ring finger

(Testimony of Robert A. Jones.)

shows a scar at the tip which is somewhat tender. There is a loss of bone at the tip of the distal phalanx of ring finger. There is an early Dupuytren's contracture of palmar fascia of hand. Advise return to work. If ring finger tip too tender patient is to return for a plastic repair of scar."

Dr. O'Connell was in charge of the outpatient.

"Patient is at this time unable to flex completely distal phalanges of second and third fingers on the proximal phalanges."

Released for duty.

Q. Now, the contracture, is that traumatic?

A. There is a great deal of dispute.

Q. That is, medically, you mean?

A. It usually takes quite a while to develop.

Q. What possible sequilla can there be from that contracture?

A. It can develop—it is a sort of hypothetical question, what it can do. It depends on the course of it.

Q. In other words, at the present time you would say it was an uncertain factor, is that it? In other words, it might develop to be very serious and it might not develop into something very serious?

A. I would not want to make any statement on that, because it is hypothetical.

Q. Did you find any evidence of any arthritic

(Testimony of Robert A. Jones.)

changes which might possibly occur for loss of motion of the distal fingers?

A. All I can give you on that is, in the X-ray report, and it says in the last line, "No evidence of arthritic change encountered." That [37] was his last report.

Q. From the report would you say that he had lost a certain amount of strength or grip in his hand?

A. He showed a weakness in his grip at the last examination.

Q. Would you say, Doctor, that the present condition of his hand, that is, the scarring that it has, and the loss of grip, and the inability to flex the ends of the fingers, would you say all of these were caused by this crushing that he received in the month of January, 1941—was that something you could tell from your examination? A. I think so.

Mr. Andersen: That is all.

Cross-Examination

Mr. Burns: Q. There is also the entry, is there not, on the discharge certificate, August 28, 1941, "Released to full duty to return if complications arise." A. That is true.

Q. And Mr. Hansen did not return to the hospital? A. I have not seen him.

Q. If he did return there would be some entry on the record, would there not?

A. Yes, there should have been.

Q. There is no entry to that effect? A. No.

Mr. Burns: Thank you, Doctor.

CHARLES HANSEN,

Recalled;

Redirect Examination

Mr. Andersen: Q. With respect to the questions asked of you by Mr. Burns, relating to previous accidents, and the reading of the deposition, at the time of that deposition was it your intention to conceal any evidence of any injuries, or what was your understanding regarding those questions?

A. It was a misunderstanding. I certainly would not have denied things that [38] I knew in that regard.

Mr. Andersen: That is all.

Mr. Burns: That is all.

PETER LECHT,

Called for the Plaintiff; Sworn.

Mr. Burns: You Honor, I do not like to interrupt, but I have been informed by the representative of the Matson Company that I was in error when I said \$296 in maintenance had been paid. It was \$396.

The Court: You mentioned \$296.

Mr. Burns: I mentioned \$296, and \$46.75. I am informed it was \$396. Perhaps Mr. Andersen will stipulate to that.

Mr. Andersen: I will take your word for it.

Q. What is your occupation, Mr. Lecht?

A. Seaman.

Q. How long have you been a seaman?

(Testimony of Peter Lecht.)

A. 38 years.

Q. Would you speak loud, so that I can hear you?

A. 38 years.

Q. And in January of 1941 were you employed by the Matson Company on the "Mauna Lei"?

A. Yes.

Q. What was your job on the boat?

A. I was a boatswain.

Q. You were the boatswain on that trip?

A. Yes.

Q. Do you remember the deckload that was on that boat?

A. Yes.

Q. What kind of a deckload was it?

A. Well, there was construction steel. I call them beams.

Q. After the boat left San Francisco, did anything happen to that load of beams?

A. Yes.

Q. What happened?

A. Well, that was around eight o'clock.

The Court: Q. You say it was about eight o'clock at night?

A. At night.

Q. Where were you?

A. I was in my room. [39]

Q. I know, but at sea where were you?

A. Out of San Francisco.

Q. Near Honolulu?

A. No, close to San Francisco, not long after we left.

Q. Something happened; what happened?

(Testimony of Peter Lecht.)

A. I heard a noise on deck, and I went and took a look at what had happened.

Q. What did you see?

A. And the steel had moved over from one side to the other.

Q. When you say "the steel," you mean the large beams? A. Yes.

Mr. Andersen: Q. Had that deckload of steel been shored? A. No, it was long steel.

Q. I say, had it been shored up, any place, with wood? A. No, there was nothing like that.

Q. How was it held?

A. Well, we had only two lashings, one on each side.

Q. Two chains?

A. Two chains, temporary lashings, they call them.

Q. Temporary lashings? A. Yes.

Q. Did the steel beams remain like that until you got to Honolulu, or were they picked up again?

A. The next morning at 8:00 o'clock we started in to put some wires around.

The Court: Q. Did you get it up in shape again? A. No, we couldn't do that.

Q. You couldn't do that?

A. It was impossible.

Mr. Andersen: Q. Did it remain like that until you got to Honolulu?

A. We even put some lumber between the beams to keep it from moving .

(Testimony of Peter Lecht.)

Q. You put some lumber between the steel to stop the moving of the steel? A. Yes.

Q. When did you do that?

A. And put wire around it.

Q. And put wire around it? A. Yes. [40]

Q. Around the steel? A. Yes.

Q. What kind of wire? A. Winch wire.

Q. You mean small cables? A. Small.

Q. Small wire cables? A. Yes.

Q. Where did you fasten that wire?

A. Where we could.

Q. Wherever you could put it under the steel and fasten it? A. Yes, and put turnbuckles on.

Q. Did the steel move after that?

A. It was moving all the way along.

Q. The whole trip? A. The whole trip.

Q. Who placed that on deck? Did you have anything to do with stowing that cargo on the deck?

A. No.

Q. Who did that? A. The longshoremen.

Q. You say you had been going to sea 38 years?

A. Yes.

Q. Did you ever do any stowing of cargo?

A. Yes, I have been stowing cargo on steam schoolers.

Q. When did you sign on the "Mauna Lei"?

A. Well, on January 6th.

Q. You shipped on January 6th? A. Yes.

The Court: Q. Did you work continuously on the ship? Did you work for some time on the "Mauna Lei"?

(Testimony of Peter Lecht.)

A. That was the first trip then. I was on that ship before.

Q. You had been on that ship before?

A. In 1935.

Q. Did you make more than one trip on here?

A. I made three trips, two more after that.

Q. You were attending the winch, were you?

A. Yes, I was working the winch.

Q. That is, when the accident happened?

A. Yes.

Q. You were at the winch, were you, when the accident happened?

A. I was running the winch.

Mr. Andersen: Q. You remember when they were going to top [41] the booms, do you?

A. Yes.

Q. And you were driving the winches?

A. Yes.

Q. After they started to raise the booms did they continue or did they stop?

A. Well, that is when the boom hit the signal line.

Q. You mean the boom hit the signal line.

A. Yes.

Q. Then did you stop?

A. I stopped the winches.

Q. The chief officer was around there some place, was he not? A. Yes, he was on the port side.

Q. That was Mr. Rosen? A. Yes.

(Testimony of Peter Lecht.)

Q. And after you stopped the boom from going up any further, when they fouled that signal line or halyard, where was Mr. Hansen?

A. Mr. Hansen was behind the cleat.

Q. That cleat is on the mast house?

A. Yes.

Q. Then what did Hansen do, if you saw him do anything?

A. Well, looked on the starboard side and I saw Hansen, and I sent Hansen over there.

The Court: What did you say?

A. I said, "Hansen, take a little line and put a little stop on that so that it can't slip."

Q. You said, "Get a little line and put a stop" on what?

A. On the snatch block on the rigging.

Q. Did he do it? A. Yes.

Mr. Andersen: Q. After he put that stop on the snatch block then what did Hansen do, if you saw?

A. He walked back the same way, to the middle of the deck load, and I saw him no more.

Q. In other words, you saw him get half way back, and that is all you saw?

A. That is all I saw.

Q. Did you see him actually get hurt?

A. No.

Q. You did not? A. No. [42]

Q. With respect to the deck load of steel, Mr. Lecht, to walk on in, were there any walk ways, any wood for a walk way across it? A. No.

(Testimony of Peter Lecht.)

Q. Was it straight, so that you could walk across it?

A. No, it was sticking up in all directions.

Q. Now, around where you were working, and around the deck, was there any oil around there, or not?

A. Well, we turned to at 1:00 o'clock, or after 1:00, I think it was, and the deck engineer always oils the winches before I touch them.

Q. Was there any oil around there before Hansen got hurt?

A. Well, there was oil all around there, it is always around there.

The Court: Q. There is always oil around there? A. Always oil around there.

Mr. Andersen: Q. At the time that you were topping these booms, what was the condition of the sea?

A. Well, there was a northwest ground swell.

Mr. Andersen: That is all.

Cross-Examination

Mr. Burns: Mr. Lecht, on the day of this accident you say that you told Mr. Andersen—Withdraw that. You say that you were working at the winches and you were standing between the two winches?

A. Yes.

Q. These winches are known as the No. 1 winch?

A. That is right.

Q. And there is one for the starboard boom and one for the port boom? A. Yes.

(Testimony of Peter Lecht.)

Q. You were facing forward? A. Yes.

Q. You were about in the middle of the ship?

A. About the middle of the ship.

Q. You had one hand on one lever and the other hand on the other lever? A. Yes. [43]

Q. And the mate gives the order to heave away, is that right? A. The mate is my boss.

Q. When he gives the order to heave away, you say, "Everybody clear"? A. Yes.

Q. And then you give her the steam?

A. Yes.

Q. And the boom starts to go up? A. Yes.

Q. When the booms got up to a certain point the booms fouled, you say? A. Yes.

Q. They fouled on what?

A. On that signal halyard, on the anchor light halyard.

Q. Some rope up on the top?

A. The anchor light line.

Q. Then what did you do, stop the booms?

A. Yes.

Q. During all of that time Hansen was standing by the starboard cleat, by the mast house?

A. Yes.

Q. Starboard side? A. Yes.

Q. Slacking away? A. Yes.

Q. Then you say that you told Hansen to do something? A. Yes.

Q. What did you tell him to do?

(Testimony of Peter Lecht.)

A. I said to take a little line and put a stopper on that so that it couldn't slip.

Q. On which side? A. Starboard side.

Q. You told Hansen to go over and fix it?

A. Yes.

Q. Then after he fixed it did you see him go back?

A. To the middle of the deckload, that is all I could see.

Q. You are sure this was on the starboard side, not the port side? A. The starboard side.

Q. Nothing happened to the block on the port side?

A. I didn't see anything happen there.

Q. If it had happened you would have known about it? A. Yes.

The Court: Q. You were facing forward?

A. Yes.

Q. You could only see Hansen part of the way coming back? [44]

A. Part of the way, to the middle of the deckload.

Mr. Burns: Q. Didn't you see Hansen come back and take his place by the cleat?

A. No, he disappeared.

Q. Didn't you see him come back and take his place by the cleat?

A. No, he was in the middle of the deckload, that is when I seen him last.

(Testimony of Peter Lecht.)

Q. How long did you wait, then, before you started the winches again?

A. Well, the mate gave me orders, "All clear."

Q. "All clear"?

A. Yes.

Q. Then what did you do?

A. Then I started the booms up again.

Q. How long was that after you last saw Hansen?

A. I don't know how long it was.

Q. One or two minutes?

A. Yes.

Q. In other words, you saw Hansen coming back?

A. Yes.

Q. Then one or two minutes later the mate said "All clear"?

A. Yes.

Q. And you started the winches again?

A. Yes.

Q. After you started the winches, just a second after, you heard him holler?

A. I didn't hear him holler.

Q. Somebody hollered?

A. Somebody hollered, and I could feel something was in the winch.

Q. You mean you could feel something was caught?

A. Yes.

Q. Then you stopped the winch?

A. As soon as I thought somebody was hurt I stopped again.

Q. You are absolutely certain, Mr. Lecht, that you did not see him come back to the cleat?

A. No.

Q. You did not?

(Testimony of Peter Lecht.)

A. I saw him come back to the middle of the load.

Q. You did not see him come back and take hold of that guy?

A. No, he was behind that mast house. [45]

Q. I am going to show you page 31, line 16 of your deposition.

The Court: Mr. Burns, I have an engagement, and I will have to continue the trial until 2:00 o'clock.

(A recess was here taken until 2:00 o'clock p. m.) [46]

Afternoon Session
2:00 O'Clock P. M.

The Court: You may proceed.

PETER LECHT,
Recalled;

Cross-Examination
(Resumed)

Mr. Burns: Q. Mr. Lecht, I will hand you a copy of the deposition of Peter Lecht, taken on Saturday, April 11, 1942, and direct your attention to page 31, line 16, and ask you to read from that point to line 17 on page 32.

Mr. Andersen: I am going to object to the reading of this, on the ground, as I understand the question, Mr. Burns was interrogating him on the block

(Testimony of Peter Lecht.)

on the side of the mast house, and this testimony shows he refers to the block on the rigging on the outboard side.

The Court: Overruled. Go ahead.

Mr. Burns: Q. Just read that to yourself. Can't you read it without glasses? A. No.

Q. I will read it to you, then, starting at line 16, page 31:

"Q. And did you watch him as he went over there to fix it? A. I was looking at him.

"Q. You were looking at him?

"A. Yes.

"Q. And did you see him fix it?

"A. Yes.

"Q. And what did he do—raise the block up on the rigging?

"A. He pushed it higher up.

"Q. So that it wouldn't rub the deckload?

"A. Yes.

"Q. So that the topping lift wouldn't rub on the deckload? A. Yes.

"Q. And did you see him go back to his place?

"A. That was the last I saw of him.

"Q. That was the last you saw of him?

"A. Yes. [47]

"Q. Well, did you see him coming back over the steel? A. Yes, sir.

"Q. And you saw him come back to his place by the mast house?

(Testimony of Peter Lecht.)

“A. Yes; and when he went behind the mast house he took hold of the guy, there.

“Q. He took hold of the guy, is that right?

“A. Yes.

“Q. And his job, when he got back to the mast house, was to slack away on the starboard guy, is that not right? A. Yes.

“Q. And that starboard guy was around a cleat, there? A. Yes.

“Q. And then after he got back to the mast house and took ahold of the guy, that was the last you saw of him, is that right? I mean at that time you didn't look at him any more?

“A. No; I couldn't see him through the mast house.

“Q. The mast house was between you, is that right? A. Yes.”

Mr. Lecht, you so testified, did you not, on your deposition?

A. I did not see him go to the mast house, I just saw him on the deckload.

Mr. Burns: You will stipulate he so testified in the deposition?

Mr. Andersen: I will stipulate that those questions were asked and those answers were given, and, furthermore, his testimony, if you will read along, will show he did not see him, because the mast house was there.

Mr. Burns: I did not ask for an argument on that. The Court will judge that.

(Testimony of Peter Lecht.)

Q. You recall testifying, don't you, Mr. Lecht, that you saw him come back to his place by the mast house?

A. Yes, and he went behind the mast house—I didn't see him go back to the mast house, I just saw him on the deckload, I couldn't see through there where he went down. [48]

Q. You didn't see him go back and take hold of the guy?

A. I saw him going back on the deckload, that is as far as I could see him.

Q. That is as far as you could see him?

A. Yes.

Q. But you won't testify that you saw him take hold of the guy?

A. I didn't say that, but I couldn't see him take hold of the guy.

Q. Do you know whether he did go back and take hold of the guy?

A. He walked over toward the mast house, and he was behind the mast house.

The Court: Q. You don't know whether he took hold of it, nor not?

A. No, I couldn't see it.

Mr. Burns: Q. You say that the block on the starboard side of the rigging slipped?

A. Yes.

Q. The one on the port wing did not slip?

A. I didn't look at that very much, and I didn't

(Testimony of Peter Lecht.)

see that. Mr. Rosen, the chief officer, was on the port side.

Q. I will read you your testimony on page 30, line 25, running over to page 31, line 2:

“Q. Did anything happen to the block on the port rigging?

“A. Nothing happened there, no.

“Q. Nothing happened on the port side?

“A. No, sir.”

Now, you testified to that in your deposition, didn't you? A. Yes.

Q. Mr. Lecht, this is your statement which is attached to your deposition, isn't it?

A. Yes.

Q. That is your signature, isn't it?

A. That is mine.

Q. And you read this statement before you signed it? I will read this to you, if I may:

“My name is Peter Lecht. I am employed as boatswain on the S. S. 'Mauna Lei,' and was so employed on January 15, 1941, when [49] A. B. Hansen hurt his hand. I have read the above statement by Chief Officer Rosen, and do not find anything wrong with his statement, that is, to the best of my knowledge. I was driving the winches at the time; my back was turned to where Hansen was working, and therefore I did not see how it happened.”

You read that, didn't you, before you signed it?

A. Yes.

(Testimony of Peter Lecht.)

Q. Now, I will read to you the statement of Mr. Rosen:

“My name is A. M. Rosen. I am employed as Chief Officer on the S. S. ‘Mauna Lei,’ and was so employed on or about January 15, 1941, when Mr. Charles Hansen, A. B., sustained injuries to his left hand.

“To the best of my knowledge this accident happened as follows:

“While start hoisting No. 1 booms, every man was placed in proper position, and A. B. Seaman Hansen was to tend to the starboard outside guy. When everything was ready, both booms were hoisted up about six feet, and then it was found that the topping lift of the port boom was chafing on sharp steel. Port boom had to be lowered back in the boom rest, to adjust the block, and the starboard boom was held in position about six feet up from the boom rest, and the men handling starboard boom stayed in their places while port boom block was being adjusted. It took about four minutes to make this adjustment, and then I gave the boatswain orders to proceed heaving up both booms.

“The boatswain started heaving up both booms and Hansen got his hand in the starboard side topping lift snatch block. How he did this, I don’t know. I did not see it, and nobody else saw it.

(Testimony of Peter Lecht.)

“This particular location where Hansen was working was in its usual condition, that is, it was not any greasier than it is [50] at any time. In fact, the sea had washed off most of the dirt and grease a few days previous, and the deck was pretty clean and dry.

“As to the shifting of the deck load, it is admitted that the load did shift some, but there was plenty of room for Hansen to work in safely. We had bad weather and rough sea before this, and this caused the cargo to shift. When we were hoisting the booms the sea was not rough, although there were still slight rolls.”

It is signed by A. M. Rosen. You read this statement of Rosen, did you not, before you signed your name? A. Well, I asked some questions.

Q. Did you read this statement that I just read to you, by Mr. Rosen? A. Yes.

Q. You read it? A. Yes.

Q. In that statement it says that the topping lift on the port boom slipped.

A. Well, I was doing my work, and I couldn't look around.

Q. You don't know? A. No.

Q. Did they lower the port boom into the boom rest? A. I don't remember that.

Q. Did you lower the starboard boom into the boom rest? A. No.

Q. Don't you have to lower the boom before you can adjust that snatch block?

(Testimony of Peter Lecht.)

A. It is not necessary.

Q. So, when you signed this statement and said that you did not find anything wrong with the statement to the best of your knowledge, you wish to change that now, do you?

A. I did not see when the man got hurt.

Q. You did not see when the man got hurt?

A. I just saw him on the deck load. [51]

Q. You read English, though, don't you?

A. Yes.

Q. You do not have any difficulty reading English?
A. No.

Mr. Burns: I think that is all.

Redirect Examination.

Mr. Andersen: Q. Just one or two questions that I overlooked. When the ship got into Honolulu, did you take the hatch covers off right away, or what did you do first?

A. We just tied up the ship and the longshoremen came aboard the ship.

Q. In taking the rigging out of the hold, the lines out of the hold, what did you do?

A. Well, we got the hatches open and got the lines up that way.

Q. How did you get the hatch open?

A. You can get a corner open, there are three sections in one.

Q. I mean, was this steel on the hatch, or was it not?

(Testimony of Peter Lecht.)

A. It was hanging on that chain, hanging down, it was moved a little bit.

Q. In other words, had the steel cargo fallen over so far on No. 1 and No. 2 hatch that they could not take the covers off until they moved the steel?

A. I didn't look at that, particularly.

Q. You didn't look at that?

A. I just got the lines up.

Q. How close to the hatches did the steel come after it had fallen over?

A. Some was further out and some was closer in.

Q. You remember these steam pipes alongside of the mast house, that are shown in the picture, Plaintiff's Exhibit 1, you know the picture that you saw?

A. Yes.

Q. There were some covers over those pipes?

A. Yes.

Mr. Burns: You mean hatch covers?

Mr. Andersen: No, pipe covers, over the steam pipes. When the steel fell over did it cover those pipes, or did it [52] not cover those pipes?

A. Well, some of the turnbuckles, some of them were bent and the steel was hanging over.

Q. Was it hanging over the steam guards?

A. Yes, it was, more or less.

Q. Now, just one more question, was Mr. Hansen a good worker?

Mr. Burns: Just a moment. That calls for the opinion and conclusion of the witness.

The Court: Sustained.

Mr. Andersen: That is all. We rest, your Honor.

Mr. Burns: That this time I wish to move for a directed verdict under Rule 50-A of the Federal Rules of Civil Procedure, on the ground that the evidence is insufficient to sustain a judgment in favor of the plaintiff, reserving the right to introduce evidence if the motion is denied.

The Court: Denied.

Mr. Burns: I will call Captain Monroe.

The Court: I think your motion should have been made under Rule 41-B.

Mr. Burns: I am sorry, I thought it was Rule 50-A.

The Court: No. It says 41-B: "After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal upon the ground that upon the facts and the law the plaintiff has shown no right to relief."

Mr. Burns: May I have the record to show that?

The Court: Sure, you may have the benefit of that.

GEORGE MONROE,

Called for the Defendant; Sworn.

Mr. Burns: Q. Where do you live, Captain?

A. 656 O'Farrell [53] street, San Francisco.

Q. What is your occupation?

(Testimony of George Monroe.)

A. Stevedore superintendent of the Matson Navigation company.

Q. Do you hold a master's license, Captain?

A. I do.

Q. How long have you held a master's license?

A. Since 1926.

Q. Since 1926? A. Yes.

Q. Before you became superintendent of stevedores, at least some years in the past you went to sea, did you? A. I did.

Q. How many years did you go to sea?

A. 22 years.

Q. You started in the deck department, did you?

A. In the deck department.

Q. And you worked your way up?

A. Yes.

Q. At the present time you are superintendent of stevedores, is that correct? A. Yes.

Q. Directing your attention to January, 1941, I will ask you if you were assistant superintendent of stevedores at that time? A. I was.

Q. And the superintendent of stevedores was Captain Iverson, is that correct? A. Yes.

Q. He is dead, now? A. He is dead.

Q. As assistant superintendent of stevedores, did you have any connection with the loading of the S. S. "Mauna Lei" during January, 1941?

A. I did.

Q. I will hand you a drawing which is labeled, "Cargo stowage, Matson Navigation Company, S. S.

(Testimony of George Monroe.)

‘Mauna Lei’ Voyage 137, January, 1941,” and ask you if that is the stowage plan for the voyage beginning on or about January 7, 1941?

A. That is it.

Q. On that voyage, Captain, was there a deck cargo carried?

A. There was a deck cargo carried.

Q. What was the deck cargo?

A. The deck cargo consisted of [54] various steel beams and bundles of reinforcing iron for the United States Army Engineers, and cargo for various consignees in the Hawaiian Islands.

Q. Those steel beams were I-beams, were they?

A. I-beams, yes.

Q. About how long were they?

A. They were 40 to 60 feet long.

Q. And they weighed approximately how much?

A. Approximately two tons.

Q. How were those beams stowed in the ship, or how were they loaded?

A. They were loaded on the deck of the vessel, alongside the hatches, alongside the No. 1 and No. 2 hatches; they were also loaded on top of four inches of dunnage, to give sufficient space in which the chains could be properly passed and secured, and they are also flush against the side of the steam guard—the guard of the steam pipe—and then out to the ship’s side.

Q. Out to the ship’s side? A. Yes.

Q. The beams run fore-and-aft?

(Testimony of George Monroe.)

A. The beams run fore-and-aft to the hatch coaming on each side of the vessel.

Q. How was this deck cargo of steel beams and reinforcing steel made fast?

A. It was made fast by chain lashings.

Q. Just describe what those chain lashings are.

A. Those lashings are chains, one-half inch diameter chains, 40 feet long, with a turnbuckle at the end. One end is secured and shackeled to an eye in the fish plate, which is the angle iron at the side of the ship, and then again to another fish eye on the hatch coaming, or the guard.

Q. How many of these chains were used on this deck load?

A. On the starboard there was No. 1 and 2—there were four chains at least on each side, and these chains were supplemented by five-inch wire cable woven around it. [55]

Q. Were they also fastened to something?

A. They were also fastened to fish eyes in the deck.

Q. The turnbuckles on these steel chains tightened, did they? A. They tightened, yes.

Q. Now, was there any shoring, wood shoring of this steel deck cargo?

A. No, there was no shoring, it is not generally customary.

Mr. Andersen: I object to that as not responsive.

Mr. Burns: I will ask it this way:

Q. In your experience, have you——

(Testimony of George Monroe.)

The Court: He answered there was no shoring. That part is responsive.

Mr. Burns: Now, I will qualify him as a man familiar with the custom of the sea.

The Court: Yes.

Mr. Burns: Q. Have you supervised and engaged in the act of lashing deck cargoes before this particular operation? A. I have.

Q. How many years have you done that?

A. Seven or eight years.

Q. Did you also do it while you were going to sea? A. While I was going to sea, too.

Q. Directing your attention to ships of the character of the "Mauna Lei," I will ask you, first, is it customary to carry deck cargo? A. Yes.

Q. And in regard to these particular steel beams, would it have been possible to stow them below?

A. No, these beams are longer than the size of the hatches.

Q. In ships of this type, what is the custom in regard to stowing deckloads of steel beams?

Mr. Andersen: May I object to this on this basis, that I do feel it makes much difference in a case of this kind what the [56] custom might be.

The Court: That may be so, but I will overrule your objection.

A. It is not possible to shore cargo.

The Court: You are asked what the custom was.

Mr. Burns: What is the custom?

A. The custom is not to shore it.

(Testimony of George Monroe.)

Q. Will you tell us whether or not such a deck-load, from your experience, can be shored?

A. No, not in a ship of that type.

Q. Why not?

A. Because she has not fixed bulwarks.

Q. What do mean by fixed bulwarks?

A. Big iron bulwarks on the side of the ship.

Q. You mean on the edges of the ship?

A. On the edges of the ship.

Q. She extends up a certain height?

A. She extends up a certain height.

Q. What would you say with regard to the manner in which the deck cargo of the "Mauna Lei", in January, 1941, was stowed, was it stowed in a safe and seamanlike manner? A. Perfectly.

Mr. Andersen: I move that that be stricken out—I did not have any opportunity to object before the answer—on the ground there is no showing, as I understand it, that this witness even saw the cargo.

Mr. Burns: I think he said he did.

A. I did.

The Court: Q. Was the cargo on the deck stowed under your supervision?

A. Yes, under my general supervision.

Q. You were there? A. I was there, yes.

Q. You saw it? A. I saw it.

Q. You saw it after it was stowed?

A. I saw it after it was stowed. [57]

The Court: Overruled.

Mr. Burns: One other thing: In regard to the

(Testimony of George Monroe.)

draft of the ship after this was loaded, is that shown on the diagram, that is, how high out of the water in front and back?

A. Yes, it shows the draft of the vessel forward, with 25 feet 5 inches, and aft 33 feet 10 inches.

Q. Will you just explain what that means?

A. It means that the after end of the ship was eight feet five inches lower than the forward end, giving extra buoyancy forward, and putting the ship in a perfectly stable condition, and trim.

Q. Did that have any effect on taking seas?

A. Yes, that would tend to decrease the amount of seas that would be taken over the forepart of the vessel.

Mr. Burns: I will offer this cargo stowage plan in evidence as Defendant's Exhibit A.

The Court: Admitted.

(The cargo plan was marked "Defendant's Exhibit A.")

Mr. Burns: That is all.

Cross-Examination

Mr. Andersen: Q. You had quite a large deckload of steel, didn't you?

A. Not any more than ordinary.

The Court: Q. Was it a large deckload? You were asked if you had a large deckload of steel.

A. I would not say it was a large one.

Mr. Andersen: Q. You would not say it was

(Testimony of George Monroe.)

a large one. You used all of the deck space available, didn't you?

A. We used all of the deck space available.

Q. All of the deck space available?

A. All of it, yes.

Q. Now, I understand you to state you could not shore those beams.

A. I said we couldn't shore the beams. [58]

Q. You mean it was impossible?

A. It was not necessary.

The Court: No, you were asked if you could shore the beams. He did not ask you if it was necessary, but you were asked if you could.

A. We could not shore the beams and make it any more secure than it was.

Mr. Andersen: That is not what you are asked, it is not responsive.

The Court: Could you shore the beams?

A. No.

Mr. Andersen: Q. You mean by that that it was impossible to shore the beams?

A. It was impossible to shore the beams.

Q. You are sure you know what I am talking about? I am talking about shoring. Let me draw a picture of a boat, if I may. You have a gunwale there on the ship?

A. What do you mean by a gunwale?

Q. You have a fish plate?

A. We have a fish plate.

Q. In other words, fore-and-aft outboard you have a fish plate? A. We have a fish plate.

(Testimony of George Monroe.)

Q. How high is that off the deck—about six inches? A. Between six and eight inches.

Q. Between six and eight inches? A. Yes.

Q. Off the deck? A. Yes.

Q. There are about five angle irons, above five $\frac{3}{4}$ -inch angle irons? A. Yes.

Q. On each side, that goes fore-and-aft, doesn't it? A. Yes.

Q. Is that right? A. Yes.

Q. We will say here are the two hatches, 1 and 2.

A. Yes.

Q. And in here is where you had this steel, is that correct? A. Correct.

Q. Here is your fish plate, here, is that right?

A. Correct. [59]

Q. That is a fish plate? A. Yes.

Q. Now, your steel was in here, some place?

A. The steel was there.

Q. Why couldn't you have shored that? Will you explain to me, please, why you could not have shored it; come and show me? Tell me how it was impossible to shore that load?

A. Do you want to suggest?

Q. No, I do not want to suggest, I want you to tell me how it was impossible to shore that.

A. There would not be sufficient support here, to take care of anything for the proper shoring of this.

Q. When you shore a load you put a beam up here, don't you, about a 4 by 12?

(Testimony of George Monroe.)

A. 2 by 12. Where are you securing it to?

Q. You can secure it here, can't you, by a wedge, and here is a fish plate.

A. The steel is secured here alongside of the steam pipe guards and alongside the bitts.

Q. Let us confine ourselves to the outboard side. We have a distance of about 40 or 60 feet. You did not have it all along the outboard side, did you?

A. No.

Q. As a matter of fact, there were not any bitts in there, at all, were there?

A. There were bitts right in here.

Q. I am asking you, on the outboard side, we have not reached the inboard side yet, if it was impossible to shore that load.

A. The shoring you would put in there would not be a suitable operation.

Q. I am just asking you if it would be impossible to shore. Was it impossible to shore that deckload?

Mr. Burns: Do you mean would it be possible to put it up and possible to have it hold, or what?

A. That is what I want to know, is it supposed to be put up there [60] and be sure that it would remain in position?

The Court: You are asking a question. You can explain that afterward if you wish. You are asked if it would be impossible to shore that load.

A. In my opinion, Judge, it would be impossible to make a good job.

Q. But it could be shored, I suppose?

(Testimony of George Monroe.)

A. The stakes could be put in there but I do not think it would be a satisfactory job.

Q. You don't think it would have held?

A. I do not think it would have held.

Mr. Andersen: Q. Let me ask you this: Considering the lashings that you put around the deck-load, don't you think that if in addition to the lashings you had shoreing that the load would not have shifted as much as it did?

A. No, I don't think so.

Q. You don't think so? A. No.

Q. Now, let us talk about the inboard side. We will say this is the mast house. You recall the mast house there, don't you? A. I do.

Q. You recall the block with a hook on the side of the mast house? A. Yes.

Q. Then you know that we have hatches up here?
A. Yes.

Q. And we have a coaming that extends about two feet? A. Yes.

Q. And here is another hatch, back here. This load came along here, some place? A. Yes.

Q. Now, you could have shored that very readily, couldn't you, very simply, couldn't you? For instance, if you had made——

Mr. Burns: Let him answer.

Mr. Andersen: Go ahead.

A. This, here, is entirely alongside the steam pipe guard, here is [61] your hatch, here is your steam pipe guard. Here it was flush against this, and it remained so the whole time.

(Testimony of George Monroe.)

Q. That load of steel, it has been testified, was between five and six feet high. You know that, don't you?

A. No, I would say four and a half feet.

Q. You would say four and a half feet. How high is that coaming around the hatch?

A. The coaming around the hatch is about two feet.

Q. There was about three feet of steel above the hatch coaming. Why couldn't you have shored that here, and here, here and here? Why couldn't you have shored that? What would have prevented you from shoring it so it absolutely could not fall, or let me withdraw that and put it this way: Why would it be impossible to have shored that on the inboard side? You said it was impossible to shore it. Tell me why it was impossible.

A. The shoring that you put in there would take care of the height of the hatch coaming, and above that, stakes above there would not be any use. They would take care of it to the height of the hatches, and above that is taken care of by the chain lashings.

Q. You loaded the steel right up to the side of the hatch, didn't you?

A. No, the steam pipe guard, about two feet.

Q. Would it not have been a very simple matter—if I may take this off and put it to you in another way—we will say this is your hatch, and there is your deck; is that clear? A. Yes.

(Testimony of George Monroe.)

Q. This is about two feet, here? A. Yes.

Q. And here is your steel coming up there, is it not? A. Yes.

Q. And in here, running the other way?

A. Yes.

Q. Wouldn't it have been a very simple matter to take a piece of shoring and put in here, and then run a 6 by 6 up and shore it in there? Wouldn't it have been a simple matter to do that, [62] and wouldn't it have prevented the steel from falling over? A. No.

Q. Is it impossible?

A. No, it is not impossible, but the question is would that shoring have held.

Q. You did not try to do any shoring, did you?

A. We did not do any shoring, no.

Q. Tell me the approximate total tonnage loaded on the starboard side of that steel.

A. The approximate total tonnage would be about 70 tons, I guess.

Q. You had about three or four chain lashings?

A. Four chain lashings lashing that.

Q. It was about four and a half to five feet high?

A. About four and a half feet.

Q. You never made any attempt to shore it with wood? A. There was no shoring, no.

Mr. Andersen: That is all.

Redirect Examination

Mr. Burns: Q. How much, approximately, did each one of these steel beams weigh?

(Testimony of George Monroe.)

A. Approximately two tons.

Q. And the manner in which they were loaded—they were I-beams, were they not?

A. They were I-beams.

Q. And were the I-beams placed in any particular way?

A. Yes, they were placed so that they interlocked.

Q. The edges interlocked?

A. Yes, the edges interlocked.

Mr. Burns: That is all.

Mr. Andersen: That is all.

ALBERT M. ROSEN,

Called for the Defendant; Sworn.

Mr. Burns: Q. Where do you live, Mr. Rosen?

A. I live in [63] San Francisco.

Q. Whereabouts?

A. 284 Ellington Avenue.

Q. Your occupation is chief mate of the "Mauna Lei", is that correct? A. Yes.

Q. How long have you been chief mate of that ship?

A. I have been about four years.

Q. How long have you been going to sea, Mr. Rosen? A. Over 40 years.

Q. Did you start out as an able seaman, or as an ordinary seaman? A. As an ordinary seaman.

(Testimony of Albert M. Rosen.)

Q. And you worked your way up to your present position, is that correct? A. Yes.

Q. Now, you worked in sailing ships, also?

A. I have, as an ordinary and able bodied seaman.

Q. And you have held a license for how many years, approximately? A. Since 1917.

Q. Calling your attention to the month of January, 1941, you were chief officer on the "Mauna Lei" at that time, were you not? A. Yes.

Q. And on or about January 7th or 8th, the day the ship left San Francisco, I will ask you if you recall the deckload that was on board ship at that time. A. Yes.

Q. Did you have anything to do with that deckload, that is, making it fast, or loading it, or securing it? A. Yes.

Q. What was your job in that connection?

A. My job was to see that the deckload was stowed and secured the best we could.

The Court: Q. Was that your duty?

A. Yes.

Mr. Burns: Q. Will you describe how the deckload was loaded and made fast on the ship?

A. The deckload was loaded fore-and-aft from the hatch coaming to the side of the ship, to these [64] steam pipe guards that were extending out, and it was secured by chain lashings; we had two chain lashings on each side all the way around over the load, from the ship's side to the hatch coaming, with turnbuckles in between to heave it tight.

(Testimony of Albert M. Rosen.)

Q. Those were the wires, is that it?

A. No. Then we also had additional wire lashings in the same way.

Q. This deckload was steel beams and reinforcing bars? A. That is right.

Q. Is that right? A. Yes.

Q. Now, Mr. Rosen, have you been on ships carrying deck cargoes before?

A. Most always all ships carry deck cargoes.

Q. Is it customary for freighters to carry a deck cargo? A. Yes.

Q. Now, you examined this deck cargo, is that correct? A. I did.

Q. And are you familiar with the custom as to loading and making fast of deck cargoes of this type? A. That is right.

Q. And was this load made fast in the customary manner?

A. Like we always have done it.

Q. I will hand you the log of the ship—you have seen this log, Counsel—Directing attention to the entries made on January 8th in the log, I will ask you to tell us by refreshing your memory from the log what time you left Pier 30? By the way, that is where the steel beams were loaded, at Pier 30?

A. Pier 30.

Q. What time did you leave the pier, and where did you go?

A. We left Pier 30 at 1:45— Just a minute, we let go of the lines at 1:00 p.m. and we anchored

(Testimony of Albert M. Rosen.)

at 1:38 at the Powder Anchorage, to load some dynamite.

Q. Did you load dynamite that afternoon?

A. Yes, we loaded dynamite that afternoon.

Q. How long were you there?

A. We laid there until 5:00 o'clock—[65] at 4:56 started heaving anchor.

Q. What time did you leave San Francisco, or leave the Bay?

A. Well, we got outside—we hove anchor and proceeded out to sea, and we got to the light vessel at 7:00 o'clock, 7:04, to be exact.

Q. Mr. Rosen, was there any emergency about leaving, were you in any hurry to leave?

A. No, we had everything secured, as far as we could secure it, we got everything in shape.

Mr. Andersen: We move that be stricken as not responsive.

The Court: It may go out.

Mr. Burns: Q. These lashings on the deck cargo, were they temporary lashings?

A. No, they were lashings that we thought sufficient lashings, should have been sufficient for the voyage.

The Court: There has been testimony here that they were temporary lashings.

Mr. Burns: Q. Were they temporary lashings, or not? A. No.

Q. Were they any different lashings than are normally placed on any deckloads of vessels of that type?

(Testimony of Albert M. Rosen.)

Mr. Andersen: May I object to that on the ground it calls for a conclusion.

A. No different. We had extra wires that were additional to our regular chain lashings.

Mr. Burns: Q. I mean, were these lashings the customary type of lashings for deckloads of that type?

A. Yes, proper lashings for it.

Q. When you got outside the heads, or whatever it is called, did you run into any rough weather that night?

A. Yes, that night we run into bad weather, when we got outside of the Farallones.

Q. Could you tell from the log what time it was, and what kind of [66] weather it was?

A. Here it says we left the light vessel at 7:00 o'clock, and two hours after that the ship was rolling heavy, bad weather, shifted deck cargo under heavy rolls.

Q. Heavy rolls, that was at what time?

A. At 9:00 p.m. to midnight.

Q. Is there any entry as to taking seas over the bow?

A. Oh, yes.

Q. When was that?

A. Between 4:00 and 8:00 in the morning. I have got my own entry here, "Vessel rolling heavily and taking heavy seas over the deck fore and aft."

Q. Fore and aft? A. Yes.

Q. At that time is there an indication of the wind

(Testimony of Albert M. Rosen.)

on the Beaufort Scale?

A. Yes, the wind at 4:00 o'clock was Force 8, and at 7:00 o'clock in the morning Force 7.

Q. What is Force 8 on the Beaufort Scale?

A. Force 8 is a strong gale.

Q. That is on the Beaufort Scale, is it not?

A. Beaufort Scale.

Q. Force 7 is what, a light gale?

A. A moderate gale, or a light gale, yes.

Q. In regard to the cargo aft, did anything happen to that from the sea?

A. Yes, the cargo aft, the seas came over so heavy it flattened the welded steel pipes—we had pipes about 16 inches in diameter and the seas hit them so hard it flattened them down about one-third, or more.

Q. There is an entry there that the deck cargo forward shifted, is that correct? A. Yes.

Q. Just what was the extent of the shifting?

A. Well, they just rolled and loosened up in between the lashings.

Q. What did you do, if anything, about that?

A. Well, next day we went and tightened up on the lashings, and did the best we could, and also I remember the carpenter put some hatch boards in [67] between the deck cargo on the port side, where there were loose holes in between the steel.

Q. In between the steel beams? A. Yes.

Q. Mr. Rosen, from your experience at sea, is it possible to secure a deck cargo so that water coming over the bow will not disturb it? A. No.

(Testimony of Albert M. Rosen.)

Mr. Andersen: I object to that as speculative

The Court: Sustained.

Mr. Burns: Q. Directing your attention to January 15, 1941, were you present on deck at the time that Hansen had his accident? A. Yes.

Q. And what time did you turn the crew to that day, about?

A. 1:00 o'clock we started raising the booms.

Q. Was the whole crew out?

A. All the crew.

Q. All the crew out there? A. Yes.

Q. Who was in charge there?

A. I was in charge.

Q. You were in charge?

A. Yes, and the boatswain assisted.

Q. An the boatswain assisted? A. Yes.

Q. Did anyone give the men their places?

A. All the men were told to go on certain places.

Q. Who told them that?

A. That was my order.

Q. Your order? A. Yes.

Q. Do you remember where Hansen was placed?

A. Hansen was placed at the starboard No. 1 guy, outboard guy.

Q. What was his job there, what was he supposed to do?

A. His job was to slack away on the guy while we were raising up the booms.

Q. [The guy, as I understand it, is a brace or snub on the boom? A. Yes.

(Testimony of Albert M. Rosen.)

Q. To keep it from swinging? A. Yes. [68]

Q. He was to slack away as the boom came up out of the cradle, is that right?

A. That is right.

Q. After all of the men were placed in their positions, did you give orders to raise the boom?

A. I gave the orders to the boatswain.

Q. How did you give the order?

A. Told him to "Heave away."

Q. Did you tell it, or say it?

A. I am just yelling or speaking plenty loud so that everybody naturally hears and he starts his winches.

Q. And the boatswain was facing you, is that correct? A. He was facing me.

Q. Where were you standing?

A. I was standing on the hatch.

Q. What hatch?

A. No. 1 hatch, facing aft.

Q. Facing aft? A. Yes.

Q. The boatswain was facing you between the two winches, is that right?

A. Between the two winches, facing forward.

Q. You gave the order to "Heave away," and then what happened?

A. We raised the booms up about maybe six feet, and the snatch block leading from the deck—we had a snatch block in the rigging.

Q. What happened?

A. The one on the port side slid down and we

(Testimony of Albert M. Rosen.)

had to stop heaving and lower down the port boom back into its cradle, or the boom rest, whatever you want to call it—we call it the boom rest or cradle.

Q. What about the snatch block on the starboard side?

A. On the starboard side it was all right; we did not have to lower the starboard boom, at all.

Q. You say that the snatch block on the port side had slid down on the rigging? A. Yes.

Q. And you lowered the port boom down to the cradle? A. Yes. [69]

Q. How about the starboard boom?

A. The starboard boom stayed in its place, and I said to “Hold everything the way it is.” Then we adjusted the snatch block on the port boom, and we took the lift back to the gypsy head, and I got on the load and said, “Heave away, Boatswain,” and he said, All clear,” and started heaving.

Q. Then after he started heaving, what happened?

A. All at once I heard Hansen holler, “Ouch,” when we had been heaving, and I seen him take his hand out from the snatch block.

Q. You stopped the boom, or did the boatswain stop the boom?

A. The boatswain stopped heaving right there.

Q. Then Hansen went up to the bridge, is that right?

A. He went up to the bridge.

Q. Up to the bridge, is that right?

(Testimony of Albert M. Rosen.)

A. Up to the bridge.

Q. Directing your attention to the block on the starboard rigging, was anything done to that?

A. Nothing at all, it was all right.

Q. When the booms were stopped, and you were fixing the boom on the port side, was there anything done to the block on the starboard side?

A. No.

Q. Had that block slipped on the starboard side?

A. No, not on the starboard side, it did not slip.

Q. Might I ask you this: From your experience, and your knowledge of these matters, is it necessary to lower the boom into the cradle before you can fix the blocks?

A. Well, taking the strain off, you can get the strain off the topping lift.

Q. You have to take the strain off?

A. If the boom hangs on you can't fix any block.

Q. In other words, this block on the starboard side, with the topping lift on the starboard rigging, the topping lift was running [70] through that?

A. Yes.

Q. And the starboard boom was lifted out of the cradle seven or eight feet, is that right? A. Yes.

Q. Or how many feet?

A. Six feet to ten feet, I couldn't say exactly.

Q. The line holding that boom was running through this block on the starboard rigging, is that correct? A. That is right.

(Testimony of Albert M. Rosen.)

Q. And you say that in order to fix that block it is necessary to let the boom down?

A. Yes, let the boom down, or put a stop on it.

Mr. Andersen: I move to strike that out as leading.

The Court: Denied. It is leading, however.

Mr. Burns: Q. Directing your attention to just before Mr. Hansen's accident, and while the block on the port rigging was being fixed, did you give Mr. Hansen any orders to go over to the starboard rigging? A. No.

Q. Did Mr. Lecht, the boatswain, give him any orders to go over there?

A. No, I did not hear any, because there was nothing to be done on the starboard rigging.

Mr. Andersen: I move that the latter part be stricken as not responsive.

The Court: It may go out.

Mr. Burns: Q. At that time, Mr. Rosen, just before you started the booms the second time, where was Mr. Hansen?

A. He was standing at his place where he should be standing.

The Court: Q. Where was that?

A. By the mast house, between the mast house and the deck cargo.

Q. What was his duty?

A. To slack the starboard guy.

Q. Where were you stationed?

A. I was standing on the No. 1 hatch. [71]

(Testimony of Albert M. Rosen.)

Q. Where, forward? A. Forward, yes.

Q. Forward of Hansen?

A. Forward of Hansen.

Q. And forward of the load? A. Yes.

Mr. Burns: Q. You were facing Hansen?

A. I was facing the gang.

Q. Facing whom?

A. I was facing the whole gang who were working. My job was to watch the operation, and I was facing the winches and the gang.

Q. You were facing the stern of the ship?

A. Yes.

Q. Had you a clear view? A. Yes.

Q. Neither the mast house or mast, nor hatch, nor anything else interrupted your view?

A. No. All of these men were in full view but the two men that were slacking the guy on the fore-castle head.

Q. Calling your attention to this diagram, made by Mr. Hansen, will you look at it, please, and see if that is a fairly correct diagram of the forepart of the "Mauna Lei"? A. Well,——

Q. Is it reasonably correct?

A. It is reasonably correct.

Q. Where did you stand?

A. I was standing here on this hatch, right here.

Q. Facing toward the stern?

A. Facing toward here.

Q. Where was Hansen?

(Testimony of Albert M. Rosen.)

A. Hansen was standing right here, right on this corner, here.

Q. Where was Lecht?

A. Lecht was here between these two winches, handling one winch.

Q. Mr. Rosen, what about grease and oil around the deck, there?

A. Well, grease and oil, these winches hadn't been used for, say, six days, and the way the seas came over the ship, washing clean over the ship, it didn't leave much grease or oil, very little. [72]

The Court: Q. I suppose there was some there?

A. Naturally there was some around the winches; there is always some oil around the winches, but not as much as usual at that time, because it was well washed off.

Mr. Burns: Q. Directing your attention to the log entry on January 15, 1941, I will ask you to tell us what the condition of the sea was on the 12:00 to 4:00 watch, and the wind.

A. 12:00 to 4:00 watch, the wind was Force 1, that was just a light breeze, you could hardly see it on the water, a small sea.

Q. That is the entry in the log?

A. That is the entry in the log, by the second mate, who was on watch from 12:00 to 4:00.

Q. That was Mr. Encell? A. Yes.

Q. There is also an entry made in the log concerning Mr. Hansen's accident. Is that entry, signed by A. Rosen, is that your handwriting?

A. That is right.

(Testimony of Albert M. Rosen.)

Q. Will you please read that entry?

A. "At sea. While topping No. 1 booms A. B. Seaman C. Hansen was handling starboard outside guy and tried to pull in the slack"—I don't know whether he was doing that or not—"he got his left hand in the block when the ship took a slight roll"—

Q. You put in the word "slight" there. It says, "when the ship took a roll," not "a slight roll."

A. Yes, "he injured his fingers—middle finger cut off and three other fingers injured. The purser, W. D. Hicks, applied first aid.

Q. Mr. Rosen, just before Mr. Hansen's accident, when the block on the port rigging was being fixed, did you walk over there—after you lowered the port boom down into the boom rest? A. Yes.

Q. Was something done to the snatch block on the port rigging?

A. The block had to be adjusted on the port rigging. [73]

Q. Did you supervise that, or what?

A. I went there and supervised that.

Q. And after that was fixed where did you go?

A. I went back on the load and hollered to the boatswain to heave away, and the boatswain said "All clear" and heaved away.

Q. Before the booms were hoisted again did you give some sort of a command?

A. Well, when I gave the command to "Hoist away", that was a command to go ahead and heave.

Mr. Burns: I think that is all.

(Testimony of Albert M. Rosen.)

Cross-Examination

Mr. Andersen: Could I ask the witness to step down here, your Honor?

The Court: Yes.

Mr. Andersen: Q. Will you step down here? This is the winch, this is the starboard winch?

A. That is right.

Q. And here is your mast house? A. Yes.

Q. Here is your pipe covering, is that about right?

A. That hatch comes out further.

Q. About like that? A. Yes.

Q. Now, as I understand your testimony, Mr. Hansen was standing right here?

A. Right here.

Q. And here is the steam pipe?

A. The steam pipe did not come out there. The mast house comes here, here is the hatch coaming, and here is the steam pipe.

Q. Would you draw in the starboard edge of No. 1 hatch and the starboard edge of the mast house and the steam pipe?

A. All right, I will do that.

Q. We will rub this out so that you can put it in in your own way.

A. That is the hatch coaming, and this, here, is the steam pipe, and here is the mast house, and here is the guard running [74] like that.

Q. Now, as I understand your testimony, Mr. Hansen was standing right there.

(Testimony of Albert M. Rosen.)

A. Mr. Hansen was standing on the mast house, where the guy line was.

Q. All right, put that in. In other words, the place that the guy line was on was right there?

A. Yes.

Q. Was Mr. Hansen standing right there?

A. Standing right by that cleat.

Q. Was he standing on the pipe cover?

A. He was standing between the pipe cover and the mast house.

Q. Was he standing on the pipe cover?

A. Well, he was on the pipe cover, yes.

Q. He was on the pipe cover? A. Yes.

Q. He therefore would be standing right where I have made that "X"?

A. A little over here.

Q. Let us put it the way you say it should be. He was standing at the forward edge of the mast house, I take it, he was standing on this pipe cover?

A. That is right.

Q. Is that where he was standing? A. Yes.

Q. The snatch block was about there, wasn't it?

A. That is right, right in there, in the middle.

Q. I thought I put it in the middle. There is no question about that, that is the snatch block?

A. Yes.

Q. He was standing here. What is the distance from where he was standing to the snatch block?

A. The distance would not be more than two feet or three feet.

(Testimony of Albert M. Rosen.)

Q. Two or three feet. Now, as I understand your testimony, he was standing here at this point which I will mark No. 1, and he had both hands on the line leading to this cleat?

A. Both hands. [75]

Q. Both hands on line running to this cleat?

A. Yes.

Q. He was standing here, and you were standing on hatch No. 1, and you gave the signal to heave away?

A. Did you say he had both hands on the cleat?

Q. I say did he have both hands on the line?

A. I don't know.

Q. In other words, just before this accident, immediately before, you were standing on the No. 1 hatch, about the middle?

A. That is right.

Q. Mr. Hansen was standing here attending to his duties? A. That is right.

Q. He was doing his job?

A. That is right.

Q. He was doing his job just as he should do it?

A. He was where he should be.

Q. He was ready to pay out the line, wasn't he?

A. Yes.

Q. Right where he stood? A. Yes.

Q. You gave the boatswain the signal to heave away? A. That is right.

Q. The boatswain heaved away? A. Yes.

Q. Will you tell me how the accident happened?

(Testimony of Albert M. Rosen.)

A. When we started heaving, Hansen let go of that line, and put his hand on the topping lift.

Q. In any event, you are positive that Mr. Hansen was standing there where I have just drawn on that diagram? A. Yes.

Q. In other words, he was standing at the forward end of this mast house? A. Yes.

Q. He was standing on the pipe cover with either one or both hands on the rope, bent over, because that cleat on the mast house is about 18 inches off the deck? A. Well, more than that.

Q. About two feet off the deck?

A. All right.

Q. So, he was bent over and ready to pay out this line? [76]

A. He did not have to bend over.

Q. He was standing by, then? A. Yes.

Q. Let me show you this exhibit, this is Plaintiff's Exhibit 2. In other words, he was standing a little bit forward of the mast house, wasn't he? This is Plaintiff's Exhibit No. 2, on the front of it there is a little cross, and that cross is alongside a cleat. A. Yes.

Q. That is the cleat from which he was slacking off?

A. That is the cleat from which he was slacking off.

Q. He was standing, according to this, a little bit forward of the mast house?

A. That is right, because that cleat is only six

(Testimony of Albert M. Rosen.)

or seven inches from the edge of the forward edge of the mast house.

Q. He was standing at the forward end of the mast house, wasn't he? He was standing there?

A. Yes.

Q. He was standing there doing just what he was supposed to do? A. Yes.

Q. That is where he was standing when he got hurt?

A. When he got his left hand into the snatch block of the topping lift, yes.

Mr. Andersen: That is all.

The Court: I want to ask you, Mr. Rosen: You said that the boatswain, Mr. Lecht, was your assistant? A. That is right.

Q. Mr. Lecht testified that he asked Hansen to go over to fix something.

A. No, Mr. Hansen never left his position.

Q. You say that Lecht is telling an untruth when he says that? A. He must be mistaken.

Q. You could not be mistaken, could you?

A. No, because I know the port boom had to be lowered, and had to be adjusted. The starboard boom did not need adjustment.

Q. Mr. Lecht said that he told Hansen to take a piece of rope, I [77] don't know what he called it, and go forward and make fast something at the end of the boom on the starboard side. A. No.

Q. That is what Lecht says, that he told Hansen that. A. He is mistaken.

(Testimony of Albert M. Rosen.)

Q. And Hansen says the same thing, Hansen says that he went over and he made this adjustment; Lecht says the same thing. Now you say——

A. I disagree with that.

Q. You say they are lying?

Mr. Burns: Just a minute, I will object to that statement.

The Court: I will withdraw it. I want to get at the truth, here, that is all I want.

Mr. Burns: Might I respectfully direct your Honor's attention to the statement made by Mr. Lecht shortly after this accident happened, and which is diametrically opposed to the testimony he gave in court.

The Court: About what?

Mr. Burns: That Mr. Lecht in court said there was nothing wrong with the port boom, and in his statement which I showed him he said it was the port boom.

The Court: I heard that. Here is one man who is the assistant to Rosen, who testified to one thing which is directly contrary to what Rosen testified to.

Mr. Burns: That is correct, and I submit to your Honor that Mr. Lecht has certainly been impeached by the statement that he made.

The Court: Not necessarily. I heard the testimony.

Mr. Burns: Also Mr. Lecht's testimony that he gave in his deposition is contrary to what he said in court. He said in his deposition that he saw

(Testimony of Albert M. Rosen.)

Hansen come back to the mast house.

The Court: That is not as noticeable as a direct contradic- [78] tion here between this witness and his assistant, Lecht, and the plaintiff in this case.

Mr. Andersen: Could I ask one or two questions?

The Court: Yes.

Mr. Andersen: Q. Mr. Rosen, this operation of making the adjustment at the first stop and before they started again, took but a few minutes; I mean after you started to raise the booms and stopped them because something was the matter, and you fixed it, that just took a few minutes?

A. That is all.

Q. The last question asked you was, when they were fixing this block on the port side you went over and supervised that operation, didn't you?

A. Yes.

Q. You went over there, and you were on the port side; in other words, you were on the other side of the mast house from Mr. Hansen, weren't you? A. That is right.

Q. So you could not look over—— A. No.

Q. You could not look over the mast house and see Mr. Hansen, could you? A. No, I could not.

Q. At that time you could not even see Mr. Lecht, could you?

A. Mr. Lecht I could see.

Q. But you could not see Hansen?

A. No, I could not see Hansen then.

(Testimony of Albert M. Rosen.)

The Court: Q. How do you know what Hansen did if you could not see him at that time?

A. Because Hansen was told to stay where he was, to hold these starboard booms, hold everything, while we are fixing the port boom. The port boom had to be lowered down and adjusted, and he was standing there and hanging onto his rope, or pulling in his slack, or whatever he was doing.

Mr. Burns: I think I can clear that up.

The Court: I wish you would. [79]

Mr. Burns: Q. After the block on the port side was fixed, then what did you do? Did you go back some place?

A. I went on No. 1 hatch and gave orders to heave away.

Q. Before you gave the order to heave away did you see Hansen? A. Yes.

Q. Where was he?

A. He was standing holding that guy attached to that cleat.

Q. In other words, he was standing holding the guy by the mast house, there, is that right?

A. Yes.

Q. On the starboard side? A. Yes.

Q. That is right? A. Yes.

Mr. Burns: I think that is all.

The Court: Q. When you went over to make some adjustment on the port side, could you see Hansen?

A. Well, I turned my back to him then, of course.

(Testimony of Albert M. Rosen.)

who were making the adjustment on the port side, and it [81] might very well be, as you have now admitted, that Hansen could go and make an adjustment on the starboard side while your back was turned. Isn't that so, it might have happened? You say you did not see it, and, of course, in your opinion, it could not have happened without your seeing it, that is your testimony. It might very well be that it could have happened without your seeing it. Proceed.

Mr. Burns: Q. Mr. Rosen, after you adjusted the block on the port side you say you went back to the No. 1 hatch and took up your position?

A. Yes.

Q. And at that time you say that you saw Mr. Hansen? A. Yes.

Q. He was by the mast house?

A. He was by his guy, in his position forward.

Q. Was he on the deck cargo?

A. No, he was standing alongside of the deck cargo.

Mr. Burns: I think that is all.

The Court: Q. How long have you been sailing on the "Mauna Lei"? A. Right now?

Q. Continuously on that boat?

A. Continuously, yes. I have a two weeks' vacation, or three weeks, now.

Mr. Burns: I think that is all.

Mr. Andersen: That is all.

MELY J. GORDENEV,

Called for the Defendant; Sworn.

Mr. Burns: Q. Captain, you are the master of the "Mauna Lei" at the present time? A. Yes.

Q. How long have you been master of that ship?

A. Six years.

Q. How long have you been employed by the Matson Navigation Com- [82] pany?

A. Almost twenty years.

Q. How long have you been going to sea, Captain? A. About 45 years.

Q. You started out as an ordinary seaman, did you? A. I started out as a naval cadet.

Q. You have been on both sailing vessels and steam vessels, is that correct? A. Yes.

Q. How long have you held a license for the deck department? A. From 1923.

Q. Since 1923? A. Yes.

Q. You have sailed on other ships than the "Mauna Lei," have you not? A. Yes.

Q. Directing your attention to January 8, 1941, on the voyage that began on that date, I will ask you, Captain, if you were the master on that date of the "Mauna Lei"? A. Yes, I was master.

Prior to departure did you examine the deck load of the vessel?

A. As far as I remember, we finished loading sometime around 8:30 in the morning, at Pier 30, and it is my duty as master of the ship to walk around to see how the cargo is stowed, so on that

(Testimony of Mely J. Gordenev.)

morning I went around and I saw how the cargo was stowed. It was not quite yet finished, because the men were still working, but they put proper lashings around each load on the deck, and then they put two chains over, and then I think it was about 1:00 o'clock we moved to an anchorage to take on dynamite, and during this time we finished securing it, putting additional wires on, and tightening up the slack in the chains by turn-buckles, so I think about 4:00 o'clock we were absolutely ready to go to sea.

Q. That evening you sailed from San Francisco?

A. That is correct, yes. [83]

Q. And that night, or sometime later, did you run into any particular kind of sea?

A. Yes, I was called about 9:00 o'clock by my officer on watch, who told me the vessel was starting to take seas.

Q. Where, what part of the vessel?

A. On the forward part.

Q. Taking seas over the forward part?

A. Over the forward part.

Q. I might ask you, is that unusual for that time of the year?

A. No, it is a usual occurrence.

Q. For January?

A. Yes. So, I watched the progress of the development, because it started to blow only moderately at first, and we took just spray, and about an hour later, something like that, I saw the water

(Testimony of Mely J. Gordenev.)

coming over more, and it started to blow considerably, so I reduced speed to 50 revolutions and hove the ship to, and by doing so I saw the ship was just about having steerage way, and I waited until the storm passed over, and I think it was something about 6:00 or 7:00 o'clock in the morning when the weather calmed down, and I again put on my full speed.

Q. During the night, did the deckload on the forward part of the ship shift?

A. Yes; it was a very dark night, but we able to see part of the cargo forward through a hole in the top, that there was a little slide to the left, but how much it was we could not see before daylight.

Q. What caused that cargo to shift?

A. I think that was the shipping of the seas and rolling.

Q. Were there seas coming over the forward part of the steel? A. Yes, there was.

Q. The next morning did you examine the deckload? A. Yes.

Q. In the forward part of the deckload what did you find?

A. I examined the forward and aft deckload, and I think I put in the log book the result of my examination. I think it is [84] mostly there.

Q. I will hand you this log book. That would be on January 9th, would it?

A. January 9th, that is right. "Vessel inspected and found (1), forward deckload of steel shifted;

(Testimony of Mely J. Gordenev.)

nothing lost. (2), 17 welded steel pipes of after deckload flattened by sea. (3), Few carboys of acid damaged, contents gone. Inside of the vessel 17 welded steel pipes flattened by cargo stowed on top. Caterpillar tractor loose, damage slight, if any. General cargo in shelter deck shifted and some fell." Signed by M. Gordenev.

Q. Now, Captain, in your experience what would you say as to the condition of the ship after this cargo was shifted?

Mr. Andersen: To which I will object as immaterial, irrelevant, and incompetent.

The Court: Sustained.

Mr. Burns: Q. Did this shifting of the cargo, in your experience, and in your opinion, render the ship unsafe and unseaworthy?

Mr. Andersen: To which I will object as immaterial, irrelevant, and incompetent.

The Court: Sustained.

Mr. Burns: Q. From your experience of 43 years going to sea, Captain, would customary practice require you to turn back to port after the shifting of the deck cargo at that time?

Mr. Andersen: To which I will object as immaterial, irrelevant, and incompetent.

The Court: Overruled.

A. It all depends on what kind of weather we have got. This weather that we had is the usual thing, and if I would turn back in this weather, first

(Testimony of Mely J. Gordenev.)

it was a moderate gale, and two hours [85] later it was a strong gale.

The Court: Q. It was not necessary?

A. It was not necessary.

Mr. Burns: Q. Directing your attention to January 15, 1941, the day Mr. Hansen was injured, you were not present out on the deck at that time?

A. No.

Q. But did you see Mr. Hansen shortly after his accident?

A. I saw him, I think it was, fifteen or twenty minutes past one; I saw him running through the inside passage toward the bridge, and I stopped and asked him what happened, and he said he lost a finger on his hand, and I called the purser and he gave him first aid.

Q. Now, after seeing Mr. Hansen, did you make an examination of the deck? A. Yes, I did.

Q. Did you go out to the forward deck of the ship? A. Yes.

Q. Did Mr. Hansen tell you where he was working?

A. I asked him how it happened, and he said, "No statement."

Q. Did you examine the deck by the mast house on the starboard side? A. Yes.

Q. What was the condition of the deck at that time, in regard to grease or oil?

A. The place around the mast house, between the winch, was dry, there was no oil there, but un-

(Testimony of Mely J. Gordenev.)

derneath it it is protected by a guard about four inches high, and when they make ready to hoist booms they drain it. They have pipes by which the oil goes outside of the ship.

Q. Now, did you examine the deck cargo on the starboard side? A. Yes.

Q. What did you find in regard to the deck cargo? A. After the storm?

Q. No, the day Hansen was injured.

A. I found that these re- [86] inforcing bars, bundles 16 to 20 feet long, were stowed on top of the solid steel, and this steel was falling to the left, shifted a little, and was around the coaming of Hatch No. 1 on the starboard side, it was almost close to the coaming; you could see the wedges, and then between Hatch No. 1 and No. 2 we have got the pipe guard, and this pipe guard was clear.

Q. Those are called steam guards?

A. Steam guards.

Q. You say they were clear?

A. It was clear between Hatch No. 1 and No. 2, and then around Hatch No. 2 this iron, again, was close.

Mr. Burns: There is a diagram prepared by the Captain that is attached to the original deposition.

The Court: We will take a recess for five minutes.

(After recess:)

Mr. Burns: The original diagram is attached to a deposition. May I remove it from the deposition and show it to the witness?

(Testimony of Mely J. Gordenev.)

The Court: Yes.

Mr. Burns: Q. I hand you a rough diagram of the forward part of the S. S. "Mauna Lei," Captain, and ask you if you prepared that diagram? Did you make that? A. Yes, I did.

Q. The diagram shows the deck load on the starboard side, and the winch on the starboard side. Does that show the nature of the deckload on the port side?

A. Yes, because it was the same way on the port side.

Q. So that you have only shown the condition on the starboard side, is that right? A. Yes.

Q. Did you make this after the accident to Mr. Hansen?

A. Yes, I think about an hour and a half after the accident.

Q. Now, I note on the right-hand side of that diagram, on the starboard side of the ship, it has some diagonal lines in red ink, [87] and it says, "Deck load," and some sort of "Line showing the edge of falling structural steel." A. Yes.

Q. What is that—"Curve line"?

A. "Curve line."

Q. And then approximately opposite the mast house there are two lines in red ink with some very fine red ink lines, what is that?

A. That is the edge, from the top down.

Q. I notice opposite and parallel to it is a line, what does that indicate? A. The steam guard.

(Testimony of Mely J. Gordenev.)

Q. It is labeled "Steam pipe or guard," is that correct? A. Yes.

Q. Does that diagram correctly depict the condition of the deck load on the starboard side of the "Mauna Lei" at the time you saw it after Mr. Hansen's accident? A. Yes.

Q. That was a short while afterward, about an hour, is that right? A. Yes.

Q. Now, I note that you also have indicated on that diagram some numbers showing where men were placed, is that correct? A. Yes.

Q. Over on the starboard side, by the toplift, there, is what looks like a "D" and then a "6" and "8". I will ask you what those represent.

A. No. 8 is a sailor.

Q. It is a man standing there?

Mr. Andersen: I am going to object to this as merely hearsay. He was not there when it happened.

The Court: Q. You were not there when it happened? A. No.

Q. You placed a man there because somebody told you?

A. No, it is in the line of my duty.

Q. Were you there?

Mr. Burns: No, he was not there.

The Court: The men should be there, that is what you know? A. Yes, that is correct.

Mr. Burns: I will offer it, your Honor, in evidence. [88]

(Testimony of Mely J. Gordenev.)

(The diagram was marked "Defendant's Exhibit "B.")

The Court: Q. This irregular line is where the deck cargo shifted? A. Yes.

Q. That cargo was in a loose condition, then, was it not?

A. I could not say it was in a loose condition.

Q. It shifted, and some of this dropped over the side alongside the No. 2 hatch, and very close to Hatch No. 1?

A. We have got turnbuckles on the chains and we take all the slack in before we start to sea, and as soon as the ship starts to rolling these lines always get a little bit of slack in them, and we always twice a day look at the turnbuckles and take in any slack there is. This happened about two hours or three hours after we had left.

Q. I understood about 9:00 o'clock.

A. I believe that you are right.

Q. What is this "G" here?

A. It is the name for this rope.

Q. Is this the outside guy line, here?

A. Yes.

Q. And is this the inside guy line?

A. It is the inside guy line.

Q. This is the starboard boom? A. Yes.

Q. And Hansen was working in here some place?

A. He was over this way.

Q. He was handling what line, the inside line?

(Testimony of Mely J. Gordenev.)

A. Yes, the inside guy line.

Mr. Burns: Q. After the deckload shifted, that is, January 8th or 9th, when you left San Francisco, and directing your attention to the next day, was there anything done about tightening those turnbuckles?

A. They were tight like a spring, it was absolutely impossible to take in any slack.

Q. About how often are these turnbuckles tested?

A. They are examined every morning and every night.

Q. What is the purpose of that examination?

A. Usually to see if there is any slack in the deckload.

Q. If there is any slack the turnbuckles are tightened?

A. The turnbuckles are tightened.

Q. I will ask you—this deckload was not shored, was it? A. No.

Q. Will you please tell the Court, Captain, why the deckload was not shored, and if you would like to illustrate on the board you may.

A. The "Mauna Lei" is a type of vessel called flush deck. The Shipping Board vessels have a raised fore-castle head, like that, and they have got bulwarks in here.

Q. How high is that bulwark?

A. About four feet.

Q. That is on Shipping Board vessels?

A. On Shipping Board vessels.

(Testimony of Mely J. Gordenev.)

Q. But not on the "Mauna Lei"?

A. On the "Mauna Lei" we have a flush deck, she was built as a passenger vessel before, and she has different lines. Her bow is not fashioned like this—it is like that.

Q. That is a sort of cross section looking at the bow?

A. Yes. We have only got a 59-foot beam, this part of the ships is 59 feet, and running from Hatch No. 2 forward from here to here it starts to sheer, and this part is very narrow.

Q. That is at No. 1 hatch?

A. At No. 1 hatch, which would make it about 35 feet.

Q. That is the deck of the vessel at the No. 1 hatch?

A. No. 1 hatch, and this is not straight, here, there is an angle to the deck, and sloping toward the bow, she is 90 degrees here, and then it starts to fall down, and the size of these plates is about six inches, and here is a water way about two inches deep, and about ten inches wide, so we must put it six [90] inches inside; here is the part of the deck load in here, and if we put shoring in here and lash it together then it will chafe. Now, if you had a bulwark and stanchions this close it will stay solid, but we could not do it on our ship on account of the manner she is built. We figured from experience in flush deck ships if we have a deckload, we take a cross section, and we make it fast here, take it around and

(Testimony of Mely J. Gordenev.)

make it fast again here, it makes it solid. I think that is the reason why I did not insist on shoring, because it is not practical.

Mr. Burns: You may cross-examine.

Cross-Examination

Mr. Andersen: Q. That is the quickest way of doing it, is it not? A. You mean quickest?

Q. Yes.

The Court: You mean the last illustration?

Mr. Andersen: The last illustration.

A. It is quick and safe.

Q. I say, it is much quicker than shoring, isn't it?

A. I don't know.

The Court: Q. I suppose you could fasten a deckload more quickly that way than you could by shoring? A. That is true.

Mr. Andersen: Much quicker.

Q. Will you come down, and using the same board—we will rub this out.

Mr. Burns: Just a moment.

Mr. Andersen: Did you want that?

Mr. Burns: Yes.

Mr. Andersen: I am sorry.

Q. Will you explain why you could not shore it?

A. Here is the [91] hatch.

Q. And it had about a 20-inch coaming?

A. Yes. Our hatch coaming is about two and a half feet. We have got a fish plate. Under this we have got iron reinforcement, and here is a steam

(Testimony of Mely J. Gordenev.)

pipe, so if I wanted to shore it I must put the shoring right over here and then put some here.

Q. Are you through now for a moment?

A. Yes.

Q. That is called a bracket, is it not?

A. Yes.

Q. That bracket is about four or six feet fore-and-aft along the hatch?

A. Just about four feet.

Q. In other words, those brackets are about four feet apart as you go along the hatch?

A. Yes.

Q. So it would be very easy to put shoring in between, I mean they would not prevent you from shoring?

A. You could do it.

Q. Wouldn't it be very simple on the inboard side to take a piece of wood, say 6 by 6, as you have shown there, and put shoring out here, and also out in here?

A. It could be done, but it is not necessary.

Q. It is not necessary?

A. No.

Q. You stated, Captain, with respect to this heavy weather that you had that you expected that kind of weather at this time of the year.

A. Yes.

Q. So that you knew when you were going out that you were going to get heavy weather?

A. Not exactly knew it, but you expect it.

Q. After this steel collapsed, or fell over, it fell in a sort of half a dozen different ways, didn't it?

(Testimony of Mely J. Gordenev.)

Mr. Burns: I object to the use of the word "collapsed."

Mr. Andersen: I will use the word "shifted."

Q. After this steel shifted it fell in half a dozen different ways, didn't it?

A. I don't know whether it fell half a [92] dozen different ways.

Q. It was very difficult to walk over the top of it, wasn't it?

A. Well, around Hatch No. 2, yes.

Q. And around Hatch No. 1?

A. I couldn't tell you, but I don't think so.

Q. You don't think so? A. No.

Q. I will direct your attention to page 16 of your deposition, at line 23. Will you read from line 23 or 24 on page 16, to about line 8 on page 17?

Mr. Burns: I will object to the question as immaterial, whether it is difficult to walk around hatches, or not. It has nothing to do with this question.

The Court: Overruled.

Mr. Andersen: Q. Would you read it to yourself, Captain? A. Yes, I have.

Q. Those questions were asked of you and those answers were given by you, weren't they?

A. Yes, but I did not answer in half a dozen ways.

Q. May I read this into the record before you explain it:

(Testimony of Mely J. Gordenev.)

“Q. And the steel was piled up there like it shows in the pictures which you have seen?”

“A. Yes.

“Q. And then after it was piled it shifted and fell in half a dozen different ways, so that it would be very difficult to walk on this steel, wouldn't it?”

“A. Well, if you tried to go on top of the steel, yes.

“Q. Certainly, of course. And when you were going to start this operation of topping these booms, in order to hang the blocks on the shrouding they, of course, had to walk back and forth across the steel, didn't they?”

“A. Yes, they must go across the steel.” [93]

A. Might I ask a question?

The Court: You answer the question and if you want to explain your answer you may.

A. I want to explain, your Honor, when this picture which was shown to me was taken at Honolulu part of the cargo was discharged, and it was entirely different than it was before.

Q. You say now that the testimony you gave in your deposition refers particularly to the condition as shown in the picture? A. Yes.

Mr. Andersen: Q. Captain, when these pictures were taken part of the steel had already been removed, hadn't it?

A. That is what I pointed out.

Q. So that before this steel was removed the steel

(Testimony of Mely J. Gordenev.)

was in greater disarray than it is here when the picture was taken, was it not?

A. I just tried to say that the top layer was not in such a condition as when you took the picture.

Q. That is, before the picture was taken after Mr. Andersen was injured, the steel at that time——

A. (Interrupting) The picture was taken afterward.

Q. The picture was taken two or three days after he was injured, but on the 15th of January, when Hansen was injured, it was difficult to walk over the steel, then, was it not?

A. Just on the edge, close to the hatch, but on top you could walk.

Q. I mean it was rough, and there were edges that you had to step on? A. Like that.

Q. You could not walk over it with too great a degree of safety, could you? A. No.

Q. I mean, it was not as safe as walking on the deck, for instance? A. Well, I don't know.

Q. You don't know? A. No. [94]

Mr. Andersen: That is all.

Mr. Burns: I have one other matter, and that is the deposition of Mr. Encell, the second mate. Do you want me to proceed and read that?

The Court: Yes, if you wish.

Mr. Burns: This is the deposition of Charles Wood Encell taken on March 9, 1942.

Mr. Andersen: I was going to suggest we could

(Testimony of Mely J. Gordenev.)

offer it in evidence and maybe the court could read it more quickly.

The Court: If it is agreeable you may offer it in evidence and let it be deemed read and call attention to such parts as you think you would like to have me hear. Is it necessary to read all of it?

Mr. Andersen: In my opinion it is simply cumulative.

Mr. Burns: I do not like to take the time of the Court to read it.

The Court: If you wish you may.

Mr. Burns: I would prefer to.

The Court: Go ahead.

(Mr. Burns thereupon read the direct examination of Charles Wood Encell from his deposition, on file herein, taken at San Francisco, California, on March 9, 1942, before Eugene P. Jones, a Notary Public in and for the City and County of San Francisco, State of California.)

Mr. Andersen: I am perfectly willing to permit the Court to read the cross-examination, rather than read it at this time.

The Court: If you do not wish it read, you need not, I will not insist upon it. The balance of the deposition may be deemed to have been read. [95]

DEPOSITION OF CHARLES WOOD ENCELL

Be it remembered, that on Monday, the 9th day of March, 1942, at 8:30 o'clock P. M., pursuant to oral stipulation between counsel for the respective parties, at the office of Messrs. Brobeck, Phleger & Harrison, Room 1100, 111 Sutter Street, San Francisco, California, personally appeared before me, Eugene P. Jones, a Notary Public in and for the City and County of San Francisco, State of California,

CHARLES WOOD ENCELL,

a witness called on behalf of the defendant in the above-entitled action.

Messrs. Andersen & Resner, represented by George R. Andersen, Esquire, appeared as attorneys for the plaintiff; and Messrs. Brobeck, Phleger & Harrison, represented by Robert Edward Burns, Esquire, appeared as attorneys for the defendant.

The said witness having been by me first duly cautioned and [96] sworn to testify the truth, the whole truth, and nothing but the truth, in the above-entitled cause, did thereupon depose and say as hereinafter set forth.

It was stipulated between counsel for the respective parties that the Notary Public, after administering the oath to the witness, need not remain further during the taking of this deposition.

It was further stipulated that the said deposition should be recorded stenographically by Frank L. Hart, a competent official shorthand reporter and

(Deposition of Charles Wood Encell.)

a disinterested person, and thereafter transcribed by him into longhand typewriting, and by stipulation between counsel for the respective parties, the reading of the testimony by the witness and the signing thereof were waived.

It was further stipulated that all objections to questions propounded to the said witness shall be reserved by each of the parties, save and except any objections as to the form of the questions propounded.

It was further stipulated that if the witness should be instructed not to answer questions propounded by counsel, in the absence of the Notary Public, it shall be deemed that the Notary Public has so instructed the witness to answer, but that he still refuses to answer.

Mr. Burns: Will you stipulate that the Notary may be excused?

Mr. Andersen: Yes. [97]

Mr. Burns: And will you also stipulate that if the witness refuses to answer any questions it will be deemed he has been instructed by the Notary to answer?

Mr. Andersen: I will insist upon that. The usual applicable stipulations.

Mr. Burns: And will you also stipulate that the reading, correcting and signing of the deposition by Mr. Encell is waived?

Mr. Andersen: Yes.

Mr. Burns: Will you also stipulate that all ob-

(Deposition of Charles Wood Encell.)

jections are saved and reserved until the time of trial, except objections to the form of the questions?

Mr. Andersen: Will you repeat that?

(Record read.)

Mr. Andersen: Well, I would insist upon that. This is your witness.

Mr. Burns: That is right.

Mr. Andersen: Yes. [98]

CHARLES WOOD ENCELL,

a witness called on behalf of the defendant, being first duly cautioned and sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

Mr. Burns: Q. What is your full name?

A. Charles Wood Encell.

Q. What is your occupation, Mr. Encell?

A. I am chief officer on the S. S. "Permanente".

Q. And where do you reside? Where is your home?

A. 2226 Stuart Street, Berkeley.

Q. Mr. Encell, you are leaving for sea shortly, are you not?

A. Yes.

Q. Do you know whether or not on April 21st, 1942, you will be in California?

A. I do not expect to be, but our sailings and arrivals remain a secret.

Q. How long have you been going to sea, Mr. Encell?

A. Approximately thirteen years altogether.

(Deposition of Charles Wood Encell.)

Q. Do you hold a master's license?

A. Yes.

Q. How many years have you held a license in the deck department? A. Since 1932.

Q. Did you serve as second officer on the S. S. "Maunalei"? A. Yes, sir.

Q. How long did you serve as second officer on that vessel? A. Approximately two years.

Q. Were you serving on that vessel during 1941?

[99]

A. I was until March 15th, 1941.

Q. Now, directing your attention to January 15th, 1941, you were employed as second mate on the "Maunalei" on that date? A. Yes, sir.

Q. What watches did you stand on that date?

A. The 12:00 to 4:00 watch.

Q. The 12:00 to 4:00 watch. And directing your attention to the 12:00 noon to 4:00 P. M. watch, were you on duty during that time? A. I was.

Q. Where were you standing your duty on the ship? A. On the bridge.

Q. At that time and on that date, that is, January 15th, 1941, where was the vessel, approximately?

A. She was arriving in Honolulu the next morning.

Q. On that watch was anything done to the rigging on the forward deck?

A. Yes, the booms were topped.

Q. They were what?

A. The booms were topped; they were hoisted up for discharging cargo the next day in Honolulu.

(Deposition of Charles Wood Encell.)

Q. Was that customary to top the booms the day before you arrive in port?

A. It is, the weather permitting.

Q. Now, at that time, that is, from 12:00 to 4:00 on January 15th, 1941, what were the weather conditions?

A. It was almost calm with light airs and smooth sea.

Q. To the best of your recollection about what time did they start lifting the booms?

A. They started at 1:00 o'clock in the afternoon.

[100]

Q. And how many watches were out there on the deck?

A. There were three watches with the boatswain, all except one man on the 12:00 to 4:00 watch, and he was at the wheel steering.

Q. In other words, the entire watch was out there with the exception of the one man at the wheel?

A. Also the chief mate, who was directing.

Q. What was the chief mate's name?

A. Albert Rosen.

Q. Did he direct the operations personally?

A. He did personally.

Q. At the time they started that work did you notice Mr. Charles Hansen, the plaintiff in this case?

A. I noticed them all. I watched the operation from the bridge.

Q. Was he on deck at that time?

A. He was on deck. He was standing at the star-

(Deposition of Charles Wood Encell.)

board side of the mast-house forward.

Q. And you knew Mr. Hansen as one of the crew, did you? A. I did.

Q. He had been on the ship for some time, had he?

A. I don't know exactly how long, but he had been on the ship for some time.

Q. Had he ever worked in any of your gangs——

A. Yes.

Q. Or gangs that you had directed?

A. Yes, he was assigned to my gang on the after end of the [101] ship for the mooring and unmooring of the ship.

Q. At this time, that is, around 1:00 o'clock on January 15th, you say Mr. Hansen was on the starboard side of the mast-house? A. He was.

Q. That is, just prior to the beginning of these operations—— A. Yes.

Q. Of raising the booms? A. Yes.

Q. Was there anything outboard from Mr. Hansen? A. Yes, there was deck cargo.

Q. What was the deck cargo?

A. It was steel.

Q. Steel beams?

A. Steel beams and bundles of reinforcing steel, I believe, and if I remember correctly.

Q. How much space would you say there was between the mast-house and the deck cargo at that time?

A. I should say three or four feet, approximately.

(Deposition of Charles Wood Encell.)

Q. From your experience, and in working at sea, was that a sufficient and proper space?

Mr. Andersen: Just a moment. I will object to that question as leading, suggestive, and calling for the conclusion and opinion of the witness.

Mr. Burns: All right.

Q. Have you ever worked on topping booms—that is, lifting booms on ships of this type?

A. Yes.

Q. Are you familiar with the operations of topping booms on this particular ship?

A. Yes. [102]

Q. Directing your attention to the space that Mr. Hansen was standing in, what would you say with regard to the amount of space that was there so far as the work that he was assigned to do——

Mr. Andersen: Just a moment. I object——

Mr. Burns: Let me finish the question, and then you can make your objection.

Q. (Continuing): Was it sufficient or insufficient?

Mr. Andersen: The same objection to that question.

Mr. Burns: You may answer.

A. I shall answer?

Mr. Burns: Yes.

A. I should say he had ample space.

Q. Will you describe just what you heard, and what was done at the time the booms were raised on this day?

(Deposition of Charles Wood Encell.)

A. Well, owing to the height of the deck load they had to lead the topping lift across the deck to the snatch block on the mast-house, and then to the niggerhead on the winch; the deck load was so high that another snatch block had to be placed on the shroud to hold the topping lift clear of the deck load.

Q. Which side was this on?

A. Both sides.

Q. Both sides? A. Yes.

Q. Both the port and the starboard sides?

A. Yes.

Q. Then how did that affect the operations of raising the booms?

A. Well, it didn't affect the operations of [103] lifting the booms or raising the booms, except it just cleared the topping lift line so that it wouldn't chafe and cut into the deck load, and when they started to heave up the booms, and got them about ten feet off the deck, the mate noticed that on the port side——

Mr. Andersen: Just a moment. I will move that be stricken as hearsay.

Mr. Burns: I will ask the questions directly.

Q. You say Mr. Rosen was directing the operations? A. He was.

Q. About where was he standing?

A. He was standing on No. 1 hatch, and out on the deck load from time to time; in that vicinity.

Q. And was he facing aft or forward?

A. Just when do you mean?

(Deposition of Charles Wood Encell.)

Q. Well, about the time they started raising the booms where was he facing when you noticed him?

A. Well, he looked all over—all over the operations.

Q. Now, the booms that were raised were the No. 1 booms, is that correct? A. That is right.

Q. And there were two of them?

A. There were two of them.

Q. And they are the booms that serve the No. 1 hatch, is that correct? A. That is correct.

Q. And there is one on the port side, and one on the starboard side? A. Yes. [104]

Q. On each side of the No. 1 hatch?

A. Yes.

Q. Before they are raised they lay prone on the deck in a cradle, is that correct—each having its own cradle?

A. Yes, each has its own cradle about six feet off the deck.

Q. The cradle is up toward the front of the ship on each side? A. Yes.

Q. And the boom is laid in that cradle?

A. That is right.

Q. Was there an order given to raise these booms? A. Yes.

Q. Who gave the order? A. Mr. Rosen.

Q. And what if anything did he say, do you remember? A. He said, "Heave away."

Q. And in sailors' language that means to raise the booms, is that correct?

(Deposition of Charles Wood Encell.)

A. That is right.

Q. And the booms are raised by winches, is that correct? A. Steam winches.

Q. Steam winches? A. Yes, sir.

Q. And there is a steam winch for each boom, is there? A. Yes.

Q. And each steam winch is aft of the No. 1 hatch and right next to the No. 1 hatch, is that correct?

A. They are.

Q. Who was handling the winches?

A. The boatswain.

Q. Could he operate both at the same time?

A. Yes, he could. [105]

Q. Where would he stand?

A. He would stand between the winches, at the forward edge of them, and levers came out from each winch so that he could hold one in each hand.

Q. He would hold a lever to each winch in each hand? A. Yes.

Q. The boatswain was facing forward?

A. He was facing forward.

Q. Now, after Mr. Rosen said, "Heave away," what happened? Did the booms start going up?

A. They started going up, and they went up about ten feet, and Mr. Rosen said, "Hold everything", and the port topping lift——

Q. I know, but when he said "Hold everything", what happened?

A. The boatswain stopped the winches.

(Deposition of Charles Wood Encell.)

Q. And what if anything had happened that you saw?

A. The snatch block on the port shroud holding the topping lift off of the deck load was not high enough on the shroud, and he stopped and lowered the port boom down into the cradle again to shift the snatch block up higher so that it would serve its purpose.

Q. And all of that time the starboard No. 1 boom was still ten feet off the deck, is that correct?

A. Yes.

Q. After the snatch block for the port boom had been changed, what happened then?

A. Mr. Rosen gave the order to heave away.[106]

Q. And after he gave the order to heave away did you hear anything else?

A. Yes, I saw the boatswain look around at all the men he had stationed around there, and he said, "Everybody stand clear."

Q. And then after the boatswain said that what happened?

A. He started heaving away again.

Q. By that you mean the boatswain started the winches? A. Yes.

Q. And what happened after that, if anything?

A. Well, this Hansen said "Ouch", and the boatswain stopped the winches, and Hansen pulled his hand out of the snatch block that the topping lift was led through to the gypsy-head on the starboard boom.

(Deposition of Charles Wood Encell.)

Q. How soon after the winches had started did Mr. Hansen say "Ouch", if you remember?

A. Immediately.

Q. Had the booms moved?

A. They had moved, but not much; they had just started to move.

Q. You say when you heard him shout "Ouch", you looked down at him, is that correct?

A. That is right.

Q. And you could see him there?

A. I saw him plainly.

Q. You say you saw him pull his left hand out of the snatch block? A. I did.

Q. And that snatch block was on what? Will you describe that again?

A. It was on the mast-house, and [107] it was hooked into a pad-eye.

Q. And a pad-eye is an eye in the mast-house?

A. That is right.

Q. And the block is hooked into it?

A. That is right.

Q. And what else was this particular block used for, or what was it used for?

A. The topping lift was led through that block from the outboard—from the rigging of the outboard rail to make it lead straight to the gypsy-head to heave the boom up.

Q. To heave which boom up?

A. The starboard No. 1 boom.

(Deposition of Charles Wood Encell.)

Q. Did this block have anything to do with the block that had been changed a few minutes before?

A. No, that one that was changed a few minutes before was on the port side of the ship.

Q. The port side of the ship? A. Yes.

Q. Now, this particular block you say had a line running through it? A. Yes.

Q. And what do you call that line?

A. The topping lift.

Q. And the topping lift runs from the winch through the block and then over to the rail, is that correct?

A. I would say it runs from the rail over to the snatch block and then to the winch.

Q. And where does it lead from to the rail— from the boom? A. From up on the mast.

Q. From up on the mast? A. Yes. [108]

Mr. Andersen: This is off the record.

(Off the record.)

Mr. Burns: Q. At the time Mr. Hansen drew his hand away, did you notice whether or not he was wearing anything on his hand?

A. He was wearing gloves.

Q. He was wearing gloves? A. Yes.

Q. After that what did Mr. Hansen do, if anything, which you saw?

A. He came running up to the bridge to me, and he said, "I have hurt myself," and he was gripping his left hand with his right.

(Deposition of Charles Wood Encell.)

Q. And what did you do then?

A. I called the purser, who acted as first aid officer on the ship.

Q. There was no regular doctor on the ship?

A. There was no regular doctor.

Q. And the purser acts? A. Yes.

Q. And the purser gave him first aid treatment, is that correct? A. He did.

Q. Well, now, Mr. Encell, before the No. 1 booms were first lifted out of the cradle, did you notice what Hansen was doing, or did you notice him particularly?

A. He was holding onto the starboard port guy. He was placed there to slack that off as the boom came up.

Q. That was not the rope that passed through the snatch block? A. That was not, no.

Q. What did that guy lead to that he was holding?

A. It led to the head of No. 1 starboard boom.

[109]

Q. Was there anything in between that—was it attached to an object on the mast-head?

A. Yes, it led from the head of the boom down to a cleat on the mast-house on the starboard side.

Q. A cleat? A. Yes.

Q. And his duty was to slack the rope through that cleat?

A. Yes, as the boom was hoisted up.

Q. As the boom was hoisted up? A. Yes.

Mr. Burns: That is all.

(Deposition of Charles Wood Encell.)

Cross-Examination.

Mr. Andersen: Q. You do not know how long Hansen had been on the ship, do you?

A. I do not remember exactly.

Q. Do you remember approximately how long it was? A. I couldn't answer that.

Q. Well, was it two or three or four or five voyages?

A. I should imagine so, but the men come and go so frequently that I don't know how long it was.

Q. How long had he worked under your direct supervision, if at all?

A. As long as he had been on the ship.

Q. His services were always satisfactory, then, I assume? A. He was rather awkward.

Q. He was rather awkward?

A. He was rather awkward. He tended to day dreams at times instead of minding his work.

Q. Did he always do the work that you told him to do? [110] A. He was always——

Mr. Andersen: Just answer the question "Yes" or "No", please.

Q. Did he always do the work you told him to do?

A. Sometimes he didn't do it very satisfactorily.

Q. Did he ever sign off the boat?

A. What is that?

Q. Did he ever sign off the boat?

A. Did he ever sign off?

Q. When he quit the boat, for instance, did he sign off?

(Deposition of Charles Wood Encell.)

A. I didn't take care of the Articles.

Q. Did you ever log him for anything?

A. No.

Q. You never had occasion to log him, did you?

A. It wouldn't be my duty to log him if I had an occasion.

Q. Did you ever report him for logging?

A. No.

Q. Did you ever criticize his work to him?

A. Yes.

Q. When? A. On numerous occasions.

Q. Well, name a few of them?

A. The dates, do you mean?

Q. Yes, anything that will refresh your memory.

A. I don't remember dates.

Q. State anything that will refresh your memory about it. In other words, what I want to know is what acts he committed that were not acts of proper seamanship.

A. Do I have to answer that? [111]

Mr. Andersen: Yes, of course you do.

Mr. Burns: If you remember.

A. Well, he was just awkward and slow in mooring the ship, and in handling the mooring lines; that was where he worked for me.

Mr. Andersen: Yes.

A. And I do not remember any specific times when that was.

Q. For how long did he act under your direct supervision in mooring the ship—was it all of the time he was on the vessel?

(Deposition of Charles Wood Encell.)

A. All of the time he was on the vessel—when-ever we moored the ship.

Q. In other words, you are trying to tell me that so far as mooring the ship was concerned, that his seamanship was not satisfactory, is that correct?

A. It was not the best.

Q. Was it satisfactory? A. Well——

Mr. Andersen: Just answer “Yes” or “No,” if you will.

Mr. Burns: You can explain your answer.

Mr. Andersen: You can answer “Yes” or “No”, and then explain your answer if you wish.

Mr. Burns: If it is not possible to give a direct answer.

A. It is not possible to give a direct answer because he was certificated as an able seaman by the Department of Commerce, and it is not possible to fire a man except for a few specific things. The Union doesn't allow it. If a man just isn't the best workman that doesn't constitute a reason for discharging [112] him.

Mr. Andersen: Q. But after each voyage you can simply refuse to sign him on, can't you?

A. If he fails to show up for duty, or show up on duty drunk.

Q. Let me put it this way: Supposing “A” signs on your ship for a trip to Honolulu and return, and the voyage is made, and he returns back to San Francisco—he was signed on that way,—and you do not like the color of his hair, you can refuse to re-sign him, can't you?

(Deposition of Charles Wood Encell.)

A. I haven't anything to do with that. It is up to the chief officer.

Mr. Burns: I do not think that is true. If "A" is sent from the union hiring hall it is up to the company to take him unless there is something—I think it is necessary for the company to take him unless he was guilty of a dereliction of duty.

Mr. Andersen: Q. Have you ever read the contract, if there is such a contract, between the Sailors' Union of the Pacific and the Matson Navigation Company?

A. I have read it now, but it was changed since then.

Q. I don't know. I never read it myself. Did you read it in January, 1941? A. No.

Q. Or January, of 1940? A. No.

Q. You are generally familiar with maritime practices, aren't you? A. Yes.

Q. And you were second in command of the vessel, weren't you? [113]

A. No, I was third. The chief officer was second in command.

Q. You are chief officer on the "Permanente"?

A. Yes, and I was second mate on the "Maunalei".

Q. You were second mate? A. Yes.

Q. Hansen worked under your direct command, didn't he? A. Yes, he did sometimes.

Q. And you were an officer on the vessel?

A. Yes.

(Deposition of Charles Wood Encell.)

Q. And you never put in a request that he be not signed on for a succeeding voyage, did you?

A. No.

Q. You never did? A. No.

Q. Now, to get back to this question that I asked you before, namely, what specific acts he did that in your opinion made him an incapable seaman, if any?

A. Well, for one thing he almost invariably put the stoppers on the mooring line wrong, backwards, or some other way, and I had to correct him continuously.

Q. You had to correct him? A. Yes.

Q. How long did he attend to this mooring for you—on every trip that you were on?

A. No, I was on there for two years, and he wasn't there that long.

Q. As long as he was on the vessel he was assigned to you, was he? A. Yes.

Q. And how many other A.B.s and ordinary seamen were on the vessel besides Hansen?

A. Five A.B.s. [114]

Q. Five A.B.s.

A. And three ordinary seamen.

Q. And three ordinary seamen? A. Yes.

Q. Did you ever replace him with another man?

A. No, because I needed all the men I had.

Q. I say did you ever replace him with another man? A. Did I ever replace him?

Q. Yes. A. No, I did not.

Q. In other words, take another A.B. or an ordinary seaman from another task on the vessel and

(Deposition of Charles Wood Encell.)

have him replace Hansen for the purpose of mooring?

A. At the particular time they are mooring they are all busy.

Q. I say did you ever sign any other A.B. or ordinary seaman to Hansen's task and shift Hansen to some other task than mooring?

A. They are all mooring, except the man at the wheel, when they go alongside of the dock.

Q. You never had him do anything except mooring, is that correct? A. That is correct.

Q. All right. Now, of course, I assume that at the time of this accident he was not working under your direct command? A. He was not, no.

Q. Somebody else was in command of the deck at that time, is that correct?

A. That is right.

Q. And you were on the bridge?

A. I was on the bridge.

Q. And you were approaching Honolulu?

A. We were arriving in Honolulu the next morning. [115]

Q. Yes. You were a night away, we will say, or twelve hours away from Honolulu, is that correct—twelve or twenty-four hours away, is that correct?

A. Within twenty-four hours.

Q. Within twenty-four hours? A. Yes.

Q. I understood you to say that you were topping these booms before you were at the port—before you were at the dock you were topping them?

(Deposition of Charles Wood Encell.)

A. Yes.

Q. You were topping them twenty-four hours away, is that correct?

A. Less than twenty-four hours away.

Q. And you say that is compatible with the practices aboard the ship?

A. Yes, I say it is.

Q. And compatible with practices aboard that ship?

A. All ships that I have ever been on.

Q. You always do that? A. Yes.

Q. And that is the usual practice, is it?

A. Yes, it is.

Q. Now, you stated the weather was quite fair?

A. I did.

Q. Leaving San Francisco you had some bad weather, didn't you?

A. We had some bad weather, yes.

Q. And you had quite a bit of bad weather, didn't you, that lasted for several days?

A. I imagine it lasted a couple of days. I don't remember exactly how long it lasted.

Q. And then it calmed? A. Yes, it did.

Q. And what is the trip from here to Honolulu—how many days? [116]

A. It is approximately seven days on that ship.

Q. So you had about two days bad weather, and the rest was good weather?

A. The rest wasn't so bad, and then we got good weather in the lower latitudes.

(Deposition of Charles Wood Encell.)

Q. You got good weather for the last two or three days?

A. I don't remember exactly how many days, but we had good weather toward the last part of the trip.

Q. According to the best of your recollection you had two or three days of good weather?

A. Yes.

Q. And the first two were bad, and the others not so bad? A. I think that is correct.

Q. That is substantially correct?

A. Yes, that is the way I would remember it.

Q. Do you remember anything about any wires being sent by the master or the chief officer to Honolulu or to San Francisco regarding a shifting of the deck load?

A. I do not know because that was outside my duty.

Q. You have no knowledge of that, have you?

A. No.

Q. You know the deck load shifted, don't you?

A. I know it shifted.

Q. And that deck load was what?

A. Part of it in this particular location was long steel beams.

Q. Long steel beams? A. Yes.

Q. How long were they?

A. I don't remember exactly.

Q. Approximately how long were they? [117]

(Deposition of Charles Wood Encell.)

A. Well, I don't remember whether they were 40 or 60 foot beams.

Q. And what did you have beside the steel beams in that immediate locality?

A. Well, I don't remember the contents of all the deck loads we carried. We have different commodities on different trips.

Q. Now, as I understand it, you say that there was plenty of room for a man to work where Hansen was working on the vessel. A. Yes.

Q. And about how many feet did you say?

A. I should say approximately three or four feet.

Q. Three or four feet? A. Yes.

Q. From the deck load to where?

A. Between the mast-house and the deck load.

Q. And that deck load extended all along the ship, didn't it? A. Practically.

Q. Was there any walk-way or anything there?

A. Yes, there was a walk-way left on the steam pipe guard.

Q. Was there any other walk-way besides that?

A. I do not remember for sure whether there was, or not.

Q. The mast-house that you mentioned, is that fore or aft? A. It is forward.

Q. It is forward? A. Yes.

Q. So everything you are talking about happened forward, didn't it? A. Yes.

Q. So on the starboard side of the ship there

(Deposition of Charles Wood Encell.)

when a man [118] walked fore and aft, what did he walk on? He had to climb over the load, didn't he?

A. After the load shifted perhaps he may have; I don't remember.

Q. At the time of this accident you say there were three or four feet from the mast-house to the first steel beams, is that correct?

A. Approximately, I should think.

Q. Yes. Now, before the load shifted how much space was there in there?

A. Well, there wasn't any more space than there was afterwards. There would have been additional space up on the top of the steam pipe guard.

Q. Additional space?

A. Of course, he wouldn't stand up there. He couldn't to do the work anyway.

Q. I see. But the point is that there wasn't much free room in this general locality, was there?

A. I should say there was ample room.

Q. You mean at the particular space where he was working and doing what he was told to do so far as you know? A. Yes.

Q. As long as he stood right there there was ample room, wasn't there?

A. Yes, for his duties.

Q. Do you know what caused the load to shift?

A. Heavy weather.

Q. Heavy weather?

A. And heavy seas coming over the deck.

(Deposition of Charles Wood Encell.)

Q. They came over the side?

A. Over the deck. [119]

Q. Over the deck? A. Yes.

Q. And now after the load shifted was it re-shored?

A. It wasn't possible to re-stow it.

Q. I said was it re-shored, or was it shored?

A. It was lashed and the lashings were re-tightened.

Q. That is, they were lashed with what?

A. With chain lashings.

Q. With chain lashings?

A. Yes, and turnbuckles.

Q. So as to be held as firmly as it could?

A. Yes.

Q. But they weren't re-stowed, were they?

A. The material was too heavy. It couldn't be at sea.

Q. In other words, it had to remain as it was?

A. Yes.

Mr. Burns: By "re-stowing", do you mean re-piling?

Mr. Anderson: Re-piling, yes.

Q. And furthermore in that rough sea do you say you couldn't have re-stacked it or re-piled it?

A. On the after deck we re-lashed it.

Q. You couldn't re-pile these steel beams in that heavy weather, could you?

A. You couldn't in any weather; it was too heavy.

(Deposition of Charles Wood Encell.)

Q. That is right. Hansen was working then on the starboard side of the ship, wasn't he?

A. Yes.

Q. (Continuing:) At this time and place in question? A. Yes.

Q. I will show you a photograph—— [120]

Mr. Burns: Let me see it.

(Photograph handed to Mr. Burns.)

Mr. Andersen: Q. Do you recognize this photograph, or, rather, what is depicted in that photograph?

(Photograph handed to the witness.)

A. That could be a photograph of the "Maunalei" at that time, or could be some other ship; I don't know.

Q. Do you recognize anything there on that photograph?

Mr. Burns: I submit he has answered the question.

Mr. Andersen: Q. Do you notice a pad-block there?

Mr. Burns: A pad what?

Mr. Andersen: Q. A pad-block or pad-ring, rather? A. Yes.

Q. Is that the pad-ring that you described before?

A. It may or may not be. I can't tell whether it is, or not.

Q. Do you notice a block in that picture?

A. I notice a lead block and a snatch block.

(Deposition of Charles Wood Encell.)

Q. And have you seen that snatch block before, could you tell?

A. I have seen hundreds of them like it. I don't know whether I have seen this before or not.

Q. Taking a general look at it——

Mr. Burns: He said he has seen hundreds of them, and he doesn't know whether that is the snatch block, or not.

Mr. Andersen: His answer is satisfactory.

Mr. Burns: By the way, which is the snatch block and which is the pad-ring?

A. That is the snatch block (indicating). [121]

Mr. Burns: You mean the one on the right-hand side of the picture is the snatch block?

Mr. Andersen: The one that is in the center, isn't it?

Mr. Burns: The right-hand block is the snatch block, is it?

Mr. Andersen: The one that is open is the snatch block, isn't it? A. Yes.

Mr. Burns: And the other one is what?

A. It is a lead block for the guy.

Mr. Andersen. Q. Now, looking at the entire thing there—the hoist rack, and the masts the way they are, and that block there, and that pad-ring that you have described, wouldn't you say that is a picture of the mast-house on the "Maunalei"?

A. I wouldn't because it might be a picture of a mast-house on a number of ships that I have seen.

(Deposition of Charles Wood Encell.)

Q. Do you know whether that vessel has any twin ships? A. I do.

Q. How many?

A. I know of the "Maunawili".

Q. Is that the only one you know of?

A. I have seen lots of them with mast-houses like that.

Q. Looking at that picture wouldn't you say that was a picture taken of the mast-house on the "Maunalei"?

A. I would say I don't know.

Q. You don't know? A. No.

Mr. Andersen: All right. I will offer this photograph for identification. [122]

(Photograph referred to marked "Plaintiff's Exhibit for identification No. 1.")

Mr. Andersen: Q. Now, in relation to that picture there, where was Hansen working, if you can describe it?

Mr. Burns: Of course, he said he doesn't know whether that is a picture of the ship, or not.

Mr. Andersen: That is true, but assuming that is——

A. Not only that, but I couldn't swear which is forward and which is aft on it, or whether it is the port or the starboard side.

Q. You couldn't swear to that? A. No.

Q. Assuming that is the starboard side just for the purpose of explanation—assuming that is the

(Deposition of Charles Wood Encell.)

starboard side of the ship, where would you say he was working?

Mr. Burns: You mean further assuming that is the mast-house on the "Maunalei"?

Mr. Andersen: That is correct, and just at or prior to the time he was injured.

A. Is that a fair question, considering that I don't even know whether that is the "Maunalei" or not?

Mr. Burns: You can answer it as best you can. He is asking you to make assumptions, and any answer you give is based upon those assumptions. It is not a fair question.

Mr. Andersen: I submit it is. I could draw a diagram if I wish, and it would serve the same purposes as that picture.

A. That is a photograph of the mast-house on some ship, but [123] I do not know which ship, nor which side of the mast-house it is.

Q. Well, let us assume that I have drawn a picture which just shows what is in that photograph, and I have drawn a picture of the mast-house on the "Maunalei", showing the pad-ring and the snatch block and the hose. Now, in relation to what I have supposedly drawn, but which is actually shown in that photograph, where was Hansen working just prior to this accident?

A. In the first place, that snatch block wouldn't have been in that pad-ring anyway when he was working there.

(Deposition of Charles Wood Encell.)

Q. All right. We can eliminate the snatch block from the picture. We won't eliminate the mast-house. Assuming that is the pad-ring, and couldn't be moved, where was Hansen working at the time I mentioned?

A. Is that a fair question?

Mr. Burns: Well, just assuming that is the ship, and if it does show on the photograph where the pad-ring is.

A. And assuming again that is the starboard side of the mast-house?

Mr. Burns: Yes, that is right.

A. And assuming again that that would make this the No. 1 boom up here, and that guy on that cleat was where he was working, he was standing facing that slacking.

Mr. Andersen: Q. In other words, in the right-hand lower center of the picture, just to the right of the hose reel, there [124] is a cleat apparently riveted on to the mast-house, and there is a rope around that cleat?

A. This cleat here, do you mean (indicating)?

Mr. Burns: Yes.

Mr. Andersen: Q. There is a top and a bottom cleat, so you would say he was working right alongside of this cleat which I have already indicated in the record, is that correct?

Mr. Burns: You mean if that is the approximate location?

(Deposition of Charles Wood Encell.)

Mr. Andersen: With the assumptions that you mentioned.

A. Yes, I would.

Q. Would you put an ink cross there, if you will, on the margin?

Mr. Burns: That is all right.

A. You mean in the margin out here—alongside here (indicating)?

Mr. Andersen: Yes.

(Witness made "X" on "Plaintiff's Exhibit for identification No. 1.")

Q. That indicates the cleat near where he was working?

A. Yes.

Q. He was within a foot or two of there?

A. What part of his body?

Q. Hansen we will say would be within a foot or two of that cleat?

A. I would say his hands were, yes.

Mr. Andersen: All right. That is close enough.

Q. And I assume at this time the weather was fair? [125]

A. Yes, it was.

Q. It was about 1:00 o'clock in the afternoon?

A. It was after 1:00 o'clock some time. They started working at 1:00 o'clock.

Q. It was some time between 1:00 and 3:00, let us put it that way?

A. Yes.

Q. It was some time between 1:00 and 3:00?

A. Yes.

Q. What were your duties that day?

A. I had the bridge watch.

(Deposition of Charles Wood Encell.)

Q. You had the bridge watch? A. Yes.

Q. And you were at that time the chief officer on watch on the bridge, were you?

A. I was the second officer.

Q. Was there another officer on the bridge also?

A. Not on the bridge. The chief officer was on the deck directing the work of topping the booms.

Q. Were you in charge of the navigation of the ship?

A. I was the navigator, yes.

Q. You were the navigating officer?

A. Yes.

Q. In charge of the welfare of the ship so far as the navigation of the ship was concerned at that time and place? A. Yes.

Q. And that was your duty?

A. Yes, that was my duty.

Q. I do not understand you to say, do I, that during all of this operation of topping these booms that you were devoting your attention to the topping operations rather than the navi- [126] gation of the ship? A. You do not.

Q. That is right.

A. It was right there in front of me.

Q. In other words, you sort of took this into your glance as you were navigating the ship, is that right?

A. I was not working any navigation problems at the moment. I was all finished for the time being.

(Deposition of Charles Wood Encell.)

Mr. Burns: Perhaps you do not understand. He was not steering the ship.

Mr. Andersen: I know he was not steering the ship.

A. My duty was navigator, and I was on watch on the bridge, and my duties among other things are to keep a good lookout for things off of the ship, and away from it, and for things on the ship as well.

Mr. Andersen: That is right.

Q. So that your primary duty there, of course, was the navigation of the ship, wasn't it?

Mr. Burns: He has answered that question.

A. And the lookout.

Mr. Andersen: Yes. And the lookout.

A. And the general condition and operations on the deck; anything. I make a lookout all of the time over what I can see of the ship, and the deck, as well as for other ships.

Q. For the welfare of the ship? A. Yes.

Q. In other words, you at that precise moment—at that time between 1:00 and 3:00 o'clock—were responsible for the welfare [127]of the ship?

A. No, I wouldn't say that.

Q. Well, I mean you were the chief officer on watch on the bridge at that time, weren't you?

A. I wasn't on the deck.

Q. You were on the bridge?

A. I was on the bridge.

Q. That is right. All right. Now, you weren't paying any particular attention to Hansen, were you?

(Deposition of Charles Wood Encell.)

A. I was paying attention to—I took in everything; I watched the whole operation—all of them.

Q. Yes. You were interested in the operation, weren't you? A. That is right.

Q. But you were not paying any particular attention to any one particular person, were you?

A. No.

Q. And you did not actually see Hansen get his hand in the block, did you? A. No.

Q. And you were not watching him that closely, were you? A. No.

Q. Because if you had you probably would have been able to stop the winch——

A. That is right.

Q. That is correct, isn't it?

A. That is correct.

Q. So you were not paying particular attention to Hansen, were you?

A. No, I was not.

Q. You saw him pull his hand out of the block, didn't you? A. After he screamed.

Q. After your attention was directed to him?

A. Yes. [128]

Q. At that particular time, just before he screamed, do you recall the particular operation you were watching?

A. I was watching the general operations.

Q. In other words, you were looking at the whole thing there in front of you? A. Yes.

Q. And your attention was directed to Hansen

(Deposition of Charles Wood Encell.)

not by virtue of anything he was doing, but by reason of the fact that you heard his yell, is that correct?

A. I had noticed Hansen before that standing there apparently day-dreaming.

Q. Oh, he was apparently day-dreaming?

A. Yes.

Q. How long before?

A. When the winches were stopped.

Q. When the winches were stopped he had nothing to do, did he? A. No.

Q. And so he was just standing there?

A. Yes.

Q. And how far away from him were you?

A. I don't know exactly.

Q. Well, in distance what was it?

A. I don't know exactly.

Q. The beam of the ship?

A. At least.

Q. At least? A. Yes.

Q. What is the beam?

A. I don't remember the beam of that particular ship. It is around 56 or 58 feet.

Q. So that you were at least the beam of the ship away from him? A. Yes.

Q. Twice the beam?

A. I don't think so. [129]

Q. Somewhere between one and two times the beam of the ship, is that right?

A. I don't know whether that is right, or not.



(Deposition of Charles Wood Encell.)

Q. Well, approximately? I realize in distances a person can't be accurate. Was it approximately that?

A. I don't see why I should guess at something I don't know.

Mr. Andersen: I do not want you to guess. I want your best estimate.

Mr. Burns: I think he has given his best estimate.

Mr. Andersen: Q. We will say approximately one and a half times the beam—would that be your best estimate? A. That or less.

Q. Yes. Now, during the time that Hansen was working there so far as you know he did everything that he was ordered to do, didn't he?

A. As far as I know.

Q. Yes. You were not in charge of him at the moment?

A. I was not in charge of him, no.

Q. And you did not hear anything in particular said to Hansen, did you?

A. I don't remember whether I did, or not.

Q. All you can remember is Rosen saying "Heave ho" a couple of times when they stopped once or twice, is that correct?

A. That is not all I can remember, no.

Q. I mean about this relevant matter. You heard him say to heave on the lines, or whatever it was—I think it was "Heave ho", or something like that which you mentioned.

(Deposition of Charles Wood Encell.)

A. "Heave away."

Q. "Heave away"?' A. Yes. [130]

Q. You heard him say that once or twice before Hansen was hurt? A. Yes.

Q. Do you remember Rosen giving any particular directions or orders to Hansen at that time?

A. I was not close enough to hear anything except his loud general orders and the boatswain's.

Q. That is, Rosen's general orders to the crew as they worked on that particular operation?

A. Yes.

Q. That is all you can remember?

A. Well, I don't remember whether he came to him personally, or not.

Q. Where is Mr. Rosen now?

A. He is still mate on the "Maunalei".

Q. And where is the "Maunalei", if you know?

A. I don't know, and it is a military secret anyway.

Mr. Burns: This is off the record.

(Off the record.)

Mr. Andersen: What was my last question?

(Record read.)

Q. Now, I assume that Hansen was injured somewhere between five and fifteen minutes after Mr. Rosen had told him to heave away—that first heave away you mentioned, is that correct?

A. I do not know how long it was.

Q. Well, what is your best estimate?

(Deposition of Charles Wood Encell.)

A. I wouldn't be qualified to estimate it, because I don't know.

Q. Well, as I recall your testimony the lines were set and [131] Rosen gave the order to heave away? A. Yes.

Q. And then the block on the port side was too low? A. Yes.

Q. And had to be changed in order to prevent a chafing of the lines, is that correct?

A. That is right.

Q. And then the lines were slacked, is that correct? A. No, I didn't say that.

Q. At any rate, the winch was stopped?

A. Yes.

Q. So that the lines must have been slacked?

A. No, not necessarily.

Q. Did they change a block without loosening the lines?

A. They lowered the port boom down into the cradle and slacked it.

Q. They slacked the port boom and left the starboard boom taut? A. Yes.

Q. And after they slacked the port boom they shifted the block, and then the mate told them to heave away again? A. Yes.

Q. And then it was while they were heaving that time that Hansen was injured, is that correct?

A. It was immediately after they started heaving.

Q. Immediately after they started heaving?

(Deposition of Charles Wood Encell.)

A. Yes.

Q. The line had to be in motion? A. Yes.

Q. It was while they were heaving that Hansen was injured? A. Yes. [132]

Q. How long would that operation take normally that I have just mentioned?

A. I don't know how long they took. I didn't time them.

Q. How long would it normally take?

A. I imagine fifteen minutes, but I am not sure.

Q. You can say about fifteen minutes, can't you?

A. I wouldn't because I don't know.

Q. You have been going to sea——

A. I didn't time that operation.

Q. You have been going to sea for thirteen years?

A. It depended entirely on how fast they worked.

Q. Well, on that particular day were they going about it in a seamanlike manner?

A. With the shifting of the block, do you mean?

Q. Yes, and the topping of the booms?

A. Yes.

Q. They were going about it in a usual fashion, were they? A. Yes.

Q. You have been going to sea for thirteen years? A. Yes.

Q. And you can't tell us what is the usual length of time that it takes to do what I have just described?

(Deposition of Charles Wood Encell.)

A. You asked me how long it took for that operation.

Q. I asked you how long it usually takes to do what I explained, to heave ho, and draw the lines taut, and lift them up, and find one is too low, and let them down and tighten one block, and heave away again—how long would that take? [133]

A. Probably ten or fifteen minutes.

Q. Yes. That is what I thought. Well, Hansen wasn't on the side where the line was slacked, was he?

A. No.

Q. He was on the other side?

A. That is right.

Q. And after they were told to heave away, all Hansen had to do was to stand there, isn't that correct, and just keep clear?

A. What is that?

Q. I mean after the winch was grinding, there was nothing more for Hansen to do, was there?

A. Yes, there was.

Q. What?

A. Slack off the guy on the cleat as the boom came up.

Q. In other words, that is to steer it and keep it in position, and to see that it doesn't——. Well, you explain it to me.

A. Well, when the boom is raised up, the guy is raised up with it.

Q. Yes.

A. And it is made fast to the boom head, and it

(Deposition of Charles Wood Encell.)

becomes tight; it will break off if it is made solid, and he has to keep it winged out a certain distance and in enough to clear the ship's side.

Q. He has to steer the end of that boom on the way up, that is correct, isn't it?

A. You might call it steering or guiding it.

Q. Yes, guiding it. I am not a sailor, and sometimes I might use the wrong term, but the general idea is there. This [134] line apparently was on that mast-house cleat there, and he was snubbing it on this cleat, is that correct?

A. He was slacking it off as it needed slacking off.

Q. Yes, that is right. He would slack off in the same ratio that the boom was hoisted, is that correct?

A. Practically.

Q. Yes.

A. No, not that fast, because it is hoisted by the topping lift, and as it comes up the boom must wing out a little bit to secure them if the ship rolls.

Q. But that is substantially so? A. Yes.

Mr. Burns: It is not the same ratio.

A. It is not the same speed.

Mr. Andersen: Q. It is not the same speed?

A. No, it is not the same speed.

Q. He probably would be a little bit slower than the winch?

A. Yes, much slower.

Q. When did he do this day-dreaming that you mentioned?

(Deposition of Charles Wood Encell.)

A. I noticed him day-dreaming while they were shifting the block on the other side.

Q. When they were shifting the block on the other side he was standing there with his hands on the line, was he?

A. On the guy line, do you mean?

Q. Yes.

A. Yes, he was standing there with his back to me part of the time. I don't know what he had his hands on.

Q. That was where he was supposed to be, wasn't it?

A. Yes. [135]

Q. And what did he do at that time that he was not supposed to do?

A. He must have put his hand on the topping lift.

Q. Well, now, did you see him do that? Did you see him put his hand on the topping lift?

A. I told you I didn't see him put it on there, but I saw him pull it out of there.

Q. You saw him pull it out, that is right.

A. And he certainly——

Q. And did you see him——

Mr. Burns: Just a moment. Let him answer the question.

A. He wasn't supposed to put his hands on it, and there was no reason or no excuse for him doing so.

(Deposition of Charles Wood Encell.)

Mr. Andersen: I move that all be stricken as not responsive——

Mr. Burns: It is responsive to your question.

Mr. Andersen (Continuing): ——and also calling for the opinion and conclusion of the witness. The question was——

Mr. Burns: Just a moment. I might state you asked what he was doing that he was not supposed to do.

Mr. Andersen: The witness said “he must have,” and that was merely a conclusion of the witness.

Mr. Burns: He answered your question.

Mr. Andersen: My motion is in the record?

Mr. Burns: Yes.

Mr. Andersen: Q. But when he was standing there day-dreaming, as you mentioned, what do you mean by the term that he was day- [136] dreaming? What was he doing that he shouldn't have done? Don't tell me what he must have done, or what he might have done. Tell me what he did that you saw, if anything.

A. For instance, what do you mean by “he did”?

Q. That is up to you. You told me he was standing there day-dreaming. A. Yes.

Q. What do you mean by day-dreaming?

A. I think that is quite plain English.

Q. Well, it is not to me. I do not know what you mean by it. What do you mean by day-dreaming?

(Deposition of Charles Wood Encell.)

A. I mean he was probably thinking about something else besides what he was doing.

Q. In other words, you are telling me what you think he thought, is that correct?

Mr. Burns: No.

A. I didn't mention what he thought.

Mr. Burns: He is telling you what he observed, and then you asked him——

Mr. Andersen: In other words——

Mr. Burns: Just a moment. And then you asked him for a definition of day-dreaming, and he is giving you his definition.

Mr. Andersen: My question was to give a definition of day-dreaming.

Q. He just stood there? You just saw him standing there, didn't you?

A. You mean did he just stand there?

Mr. Andersen: Yes. [137]

A. Or did I see him stand there?

Q. What was he doing?

A. He may have done something that I didn't see him do.

Q. What I want you to tell me, at this moment just before the second command to heave away was given, and at the moment you did see him, I want you to tell me what he was doing.

A. He wasn't doing anything much that I noticed.

Q. Now, tell me, was he where he was ordered to be?

(Deposition of Charles Wood Encell.)

Mr. Burns: Well, that has been asked and answered.

Mr. Andersen. This is cross-examination.

Q. Was he where he was ordered to be?

A. Yes, he was.

Q. At the moment was he doing what he was ordered to do?

Mr. Burns: At what moment?

Mr. Andersen: At the moment you saw him.

A. Which moment?

Mr. Andersen: This is the time he saw him.

A. I saw him several different moments.

Q. At any one of those several different moments before he was hurt was he following out his orders?

Mr. Burns: If he knows.

Mr. Andersen: Yes, if you know.

A. I don't know.

Q. You don't know? A. No.

Q. Did you see him do anything incompatible with any orders you heard given?

A. I saw the result of it when [138] he pulled his hand out of the block.

Mr. Andersen: I move that be stricken as not responsive.

Q. Did you see him doing anything incompatible with the orders he was given?

A. I noticed his inattention to his work, and what I called his day-dreaming.

Q. What was his inattention to his work—describe it, please?

(Deposition of Charles Wood Encell.)

A. He was standing there appearing to be thinking about something else.

Q. All right. Now, when the first order was given to heave away, and Hansen was on the starboard side, did he slacken off on that cleat?

A. He did.

Q. He did. The order was given to stop, was it?

A. It was.

Q. And he stopped slacking, didn't he?

A. Yes.

Q. And when the next order was given to heave away, and just before he was hurt, did you see Hansen at that time?

A. Yes, I saw them all.

Q. Did you see Hansen particularly?

A. At that particular moment just before they started?

Q. Yes. A. I don't remember.

Q. You don't remember?

A. It was a long time ago.

Q. All right. You don't remember. By the way, with respect to that deck load, you know that several complaints had been made about that deck load shifting, and it being unsafe there?

A. No, I do not. [139]

Q. You never heard anything about that?

A. No.

Q. When that steel was loaded aboard the vessel was it lashed or shored before leaving San Francisco? A. It was.

(Deposition of Charles Wood Encell.)

Q. It was both lashed and shored?

A. It was lashed. I don't know whether it was shored, or not.

Q. You have no recollection of that?

A. I don't remember that particular deck load that clearly.

Q. Was there a man named Putnam working near Hansen at the time?

A. There was a man named Putnam, an ordinary seaman, on the ship at that time. I don't remember just where he was placed during this operation.

Q. You do not remember seeing him during this operation?

A. I saw them all, but I do not remember where this particular man was.

Q. Was there a man named Rasmussen there at that particular time?

A. There was a man named Rasmussen on board the ship at that particular time, but I do not remember whether he was there at that time, or not.

Q. Was he an A. B.? A. He was an A. B.

Q. Was there a man named Campbell on board the ship? A. Yes.

Q. Was there a man named Snyder?

A. I do not remember Snyder.

Q. Harold Snyder?

A. I do not remember him. [140]

Q. All of the seamen were engaged in this operation, weren't they? A. All except one.

(Deposition of Charles Wood Encell.)

Q. And which one was that?

A. I don't know which one it was. One of them was at the wheel, but I don't remember which one it was that was at the wheel at that time.

Q. There was one seaman at the wheel at the time? A. Yes.

Q. By the way, when Hansen reported to you he reported to you on the bridge, didn't he?

A. Yes.

Q. And you saw his hand, did you not?

A. I couldn't see it clearly. I saw blood on his hand. He was holding his left hand with his right like that (indicating).

Q. You did not see it thereafter, I assume?

A. It was bandaged up the next time I saw it.

Q. You saw the blood on his hand?

A. Yes.

Mr. Burns: This is off the record.

(Off the record.)

Mr. Andersen: Q. I show you another picture. Do you recognize that?

(Photograph handed to Mr. Burns and thereafter to the witness.)

A. As what?

Q. Do you recognize anything in that picture?

A. I recognize it as a deck and a deck load of a ship.

Q. That is all you recognize?

A. I might recognize more [141] details in it, yes.

(Deposition of Charles Wood Encell.)

Q. Well, you recognize there is a winch here, don't you? A. Yes.

Q. And you recognize what appears to be steel, don't you? A. Yes.

Q. Was that part of the condition of the deck load of the "Maunalei" on January 15th, or during that voyage?

A. It may or may not have been.

Q. You wouldn't say yes or no?

A. I wouldn't say whether that was that ship, or some other ship. There is nothing to indicate what ship it is.

Mr. Andersen: I will offer this as "Plaintiff's Exhibit 2 for identification."

(Photograph referred to marked "Plaintiff's Exhibit for identification No. 2.")

Q. I will show you another picture.

Mr. Burns: Let me see it.

(Photograph handed to Mr. Burns.)

Mr. Andersen: Q. Do you recognize the picture handed to you by Mr. Burns?

(Photograph handed to the witness.)

A. As what?

Q. As anything.

A. I recognize the scenery back there as Honolulu Harbor.

Q. As Honolulu Harbor? A. Yes.

Q. You don't recognize the ship or the load, of course, do [142] you?

A. I couldn't identify that ship or the load, either.

(Deposition of Charles Wood Encell.)

Q. Or the man in the picture? A. No.

Q. Or anything about that picture. A. No.

Q. You couldn't identify it as having seen it before, could you?

A. There are so many scenes similar to that it might be any one of them.

Q. You couldn't identify this as having been anything you ever saw before, then? A. No.

Mr. Andersen: I will offer this as "Plaintiff's Exhibit No. 3 for identification."

(Photograph referred to marked "Plaintiff's Exhibit for identification No. 3.")

Q. Can you describe Mr. Hansen to me?

A. I am not very good at describing people.

Q. Well, describe him as best you can?

A. Is that necessary?

Mr. Burns: Yes, you will have to answer that question if you can, and if you remember what he looked like.

A. He was about medium height and medium build, I should say.

Mr. Andersen: Q. About how old?

A. I should imagine he was in his thirties, but I don't know.

Q. Sort of ruddy complexion?

A. I wouldn't say; I wouldn't know.

Q. By the way, this deck load shifted right after you left the Golden Gate, didn't it—right after you got out of the [143] heads?

A. It wasn't very far out from the heads.

(Deposition of Charles Wood Encell.)

Q. Shortly after you went through the Gate, is that true?

A. I have seen so many deck loads shift at sea many different times that I do not remember the times or the details. It has been a long time ago.

Q. According to the best of your recollection this deck load shifted shortly after you left the Golden Gate?

A. I should say it was probably about five or six days before we got to Honolulu, but I don't remember exactly what day it was.

Q. By the way, when Hansen was working there, which way was this No. 1 boom being lifted?

Mr. Burns: Which one—the starboard or the port?

Mr. Andersen: This starboard boom.

Q. He was guiding the starboard boom, No. 1 boom starboard, isn't that correct?

A. He was slacking the guy on that.

Q. He was slacking the guy on that?

A. Yes.

Q. And which way was he facing in doing that?

A. He was facing the cleat.

Q. He was facing the cleat?

A. That the guy was made fast to.

Q. You mean he was standing right in front of it and facing with his face facing the cleat and the mast-house, or would he be looking forward?

A. He would be looking more or less forward.

(Deposition of Charles Wood Encell.)

Q. More or less forward? A. Yes.

Q. Sort of standing in a cater-cornered position looking at the cleat and the boom at the same time?

A. I didn't pay enough or particular attention to tell how he was standing and to remember exactly how he was facing.

Q. And you heard this cry of "Ouch" how long after the second command to heave away?

A. Almost immediately.

Q. You say almost immediately? A. Yes.

Q. You do not know how many feet of line had run out? A. No.

Q. You would have no idea?

A. Not very much.

Mr. Andersen: I think that is all.

Redirect Examination

Mr. Burns: Q. Now, when you said almost immediately you heard "Ouch" after the cry of "Heave away", did you mean after that, or after the winches had started?

A. After the winches started.

Q. In other words, there was an order by Mr. Rosen to heave away, and then the boatswain said something, didn't he?

A. Then the boatswain said "Everybody clear, we are going to heave away."

Q. And then he started the winches?

A. Yes.

Q. And then you heard the cry of "Ouch"?

A. Yes. [145]

(Deposition of Charles Wood Encell.)

Q. At the time you observed Mr. Hansen and the operation of raising the booms, you were on the bridge? A. I was.

Q. The bridge was higher than the deck on which they were working on the booms, is that correct?

A. Yes.

Q. So that you were looking down on them?

A. Yes.

Q. Down and at an angle? A. Yes.

Q. They were forward of you and down from you? A. Yes.

Mr. Burns: That is all. Is that all, Mr. Andersen?

Mr. Andersen: That is all. [146]

State of California,

Northern District of California,

City and County of San Francisco—ss.

I hereby certify that on the 9th day of March, 1942, at 8:30 o'clock P. M., before me, Eugene P. Jones, a Notary Public in and for the City and County of San Francisco, State of California, at the office of Messrs. Brobeck, Phleger & Harrison, Room 1100, 111 Sutter Street, San Francisco, California, personally appeared pursuant to oral stipulation between counsel for the respective parties, Charles Wood Encell, a witness called on behalf of the defendant herein, and Messrs. Andersen & Resner, represented by George R. Andersen, Esquire, appeared as attorneys for the plaintiff; and Messrs.

Brobeck, Phleger & Harrison, represented by Robert Edward Burns, Esquire, appeared as attorneys for the defendant; and the said Charles Wood Encell being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by his deposition hereto annexed.

And I further certify that the said deposition was then and there recorded stenographically by Frank L. Hart, a competent official and disinterested shorthand reporter, appointed by me for that purpose and acting under my direction and personal supervision, and was transcribed by him, and by stipulation between counsel for the respective parties, the examination and reading of the deposition by the witness and the signing thereof were waived.

And I further certify that the said deposition has been [147] retained by me for the purpose of securely sealing it in an envelope and directing the same to the Clerk of the Court as required by law.

And I further certify that the exhibits hereto attached and marked "Plaintiff's Exhibits for identification Nos. 1, 2 and 3," are the exhibits referred to and used in connection with the deposition of said witness.

And I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

In Testimony Whereof, I have hereunto set my hand and official seal at the City and County of

San Francisco, State of California, this 12th day of March, A. D. 1942.

[Seal] EUGENE P. JONES,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed July 3, 1942. [148]

Mr. Burns: There is just one other matter. Counsel, perhaps, will be willing to stipulate to it, and that is that the distance between the mast house and these steam guards is 35 inches.

Mr. Andersen: I think that is what it is.

Mr. Burns: From the mast house to the inner side of the steam guard it is 35 inches.

Mr. Andersen: I will stipulate that is substantially correct. [149]

Mr. Burns: And from the mast house to the outside of the steam guard is 51 inches; in other words, the steam guard is as wide as the difference between 35 inches and 51 inches, which is 16 inches.

Mr. Andersen: I will so stipulate.

Mr. Burns: That is all. I rest.

Mr. Andersen: I have a little rebuttal, your Honor.

CHARLES HANSEN,

Recalled in rebuttal.

Mr. Andersen: Q. Mr. Hansen, directing your attention to this part of the blackboard which was partly made by me and partly by Mr. Rosen, this No. 1 indicates the spot where Mr. Rosen said you were standing just before your hand went in the block. Were you there at that time? A. No.

Q. Would you come down here and explain to the Court just where you were at just about the time that you got your hand caught in that line? Stand over here, so that the Judge can see it.

A. This is where the cleat was for the outboard guy, and I had to stand here——

Q. Just state where you were.

A. Right here.

Q. In other words, you were at the side of the cleat?

A. I was standing about twelve inches away, right here. Here is the cleat, as you can see in the picture.

Q. In other words, that is where you were standing before. At the time that you were hurt where were you?

A. At the time I was hurt, I was coming back across the deckload toward this snatch block, and I was about here—I should say—you see that snatch block extends from the mast house, I would say, pretty close to two feet, I think it is two feet. The reason that snatch block [150] is so far out from the mast house is so that it will not interfere with

(Testimony of Charles Hansen.)

that. You see, this is the topping lift going over here, and it is going from this snatch block over to the railing. I am coming back, and I fell into that topping lift about here, I would judge. In other words, I think I was nine or twelve inches away from the block when my hand was dragged in by the topping lift, and I pulled it out.

Mr. Andersen: That is all.

Cross Examination

Mr. Burns: Q. Mr. Hansen, you said that you had gone to sea over a period of years?

A. Over a period of 29 years.

Q. Most of the time you have been in the steward's department? A. No.

Q. Didn't you serve in the steward's department about three years?

A. I served on the "Mariposa" in the steward's department in 1934 or 1935.

Q. Hadn't that been most of your experience?

A. No.

Q. In 1924 you were assistant to the manager at the Royal Hawaiian Hotel, were you not?

A. I was for about a year and a half assistant to the manager.

Q. Then after that time you also worked for the Palace Hotel?

A. No, before that time, that was before 1924.

Q. Before 1924? A. Yes.

Q. After 1924 you worked at hotels?

A. In 1924, the last part of 1924 to the early part

(Testimony of Charles Hansen.)

of 1926 I was assistant to the manager of the hotel in Honolulu.

Q. After that didn't you work at some hotel?

A. After 1926?

Q. Yes. A. No.

Mr. Burns: That is all.

Mr. Andersen: That is our case. [151]

The Court: Is the matter submitted?

Mr. Andersen: Yes.

Mr. Burns: Yes.

The Court: Plaintiff brings suit against the defendant under the provisions of the Jones Act. He sues for damages for personal injuries. In his complaint he alleges, among other things, that on or about the 15th day of January, 1941, while he was working upon the deck of the vessel called "Mauna Lei," owned by the Matson Navigation Company, he met with an accident, and his left hand was seriously injured. After listening to all of the evidence in the case, it seems to me that the question upon which the decision will turn is whether there was any negligence on the part of the defendant.

At or about the time the accident happened, the plaintiff was working on the starboard side of the vessel, near the mast-house, and he was attending to some guy lines at the time that orders had been given to prepare the booms on the vessel ready for unloading the cargo.

X The undisputed evidence here shows that the plaintiff was injured. It shows, further, that a lot of steel was stowed on the deck of the vessel, and that that steel had shifted, and I think that the evidence further shows that the deck cargo was in a somewhat loose condition. This is particularly borne out by the testimony of the captain of the vessel, who produced a diagram showing the shifting and loosening of the cargo.

The only dispute there seems to be in this case is whether the plaintiff attempted to adjust or fasten the block on the starboard side, which was a part of the boom. The plaintiff tells, with some particularity, what he did, and the circumstances under which he did it. He is corroborated by the witness Peter Lecht, [152] who was the boatswain in charge of the winches. The chief mate, Mr. Rosen, mentions Mr. Lecht as his assistant. Mr. Lecht says that he called the plaintiff's attention to the fact that something appeared to be wrong with the block on the starboard side, and directed him to fasten it in such a manner as to prevent an accident happening, and Mr. Lecht states that he observed the plaintiff going to the block on the starboard side and tying it, and that he saw him returning to his place, but lost sight of him before the accident happened.

As has been stated by counsel for plaintiff, the defendant owed a duty to every man on that ship, a paramount duty, and that duty is to give a safe place to work. Surely, it cannot be said that there was a safe place for sailors to work on the deck of that

ship on January 15, 1941. The testimony, as I say, is undisputed that there was a shifting of the deck cargo, a cargo composed of heavy steel beams, on top of which was a lot of steel strips used for reinforcing concrete. The captain, in his testimony, mentioned those strips, and how they appeared to him after the accident, and the impression I got from the testimony was that they were loosely arranged on top of the steel beams—surely a dangerous place for anybody to attempt to walk upon at sea, while the ship was in motion.

I believe the testimony of Mr. Lecht, and I also believe the testimony of the plaintiff, with regard to how the accident happened.

The witness Rosen, as he truthfully said, was in no position to see what did happen at the time that Hansen made his trip across the deck load and back, as he was busy attending to some adjustment of the blocks on the port side of the vessel; and he made it quite clear that it might be possible for the accident [153] to happen, as described by the plaintiff, without his seeing it.

I think that the defendant is guilty of negligence, in that it did not provide the plaintiff with a safe place to work. The captain explained that, because of the manner in which the ship was constructed, it would be most impractical to shore up the cargo and make it safe, and that may be true; notwithstanding that fact, it was the duty of the defendant to see to it that that cargo was securely fastened, and the evidence shows that it was not.

As has been suggested here by counsel, sailors are engaged in a dangerous occupation. The law recognizes that fact, and is mindful of the dangerous duties of a sailor, particularly as it has provided that the doctrine of assumption of risk and contributory negligence do not apply in any negligence case brought by a seaman. The admiralty doctrine of comparative negligence applies.

There is nothing in the evidence to show that the plaintiff was guilty of carelessness in what he did. He seems to be free from any blame, whatsoever. I find, as I say, that the defendant is guilty of negligence as charged in the complaint.

The plaintiff has received a serious injury to his hand. I have no doubt that he will be able to work as a seaman and to use the hand, maybe not to the fullest extent, but I notice from the testimony of Dr. Jones that very good results were obtained from the treatment at the Marine Hospital, and that the plaintiff has been advised to return to work, which he has done.

Under all the circumstances, I am of the opinion that \$2000 would be about the right sum to allow the plaintiff as damages, and it is ordered that plaintiff recover that sum from the defendant, together with his costs. [154]

Counsel for plaintiff may prepare and submit findings of fact and conclusions of law to the Court.

Mr. Andersen: Yes, your Honor.

[Endorsed]: Filed July 3, 1942. [155]

[Endorsed]: No. 10186. United States Circuit Court of Appeals for the Ninth Circuit. Matson Navigation Company, a corporation, Appellant, vs. Charles Hansen, Appellee. [Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed July 3, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 10186

MATSON NAVIGATION COMPANY,
a corporation,

Appellant,

vs.

CHARLES HANSEN,

Appellee.

CONCISE STATEMENT OF APPELLANT'S
POINTS ON APPEAL AND DESIGNATION
OF PARTS OF RECORD NECESSARY
FOR CONSIDERATION THEREOF.

Appellee Charles Hansen was employed as an able bodied seaman on the S. S. Mauna Lei owned and

operated by the appellant Matson Navigation Company. The vessel carried a deck load of steel beams and bars which was stowed on each side of the forward deck. After the vessel left port the deck load shifted when the vessel encountered stormy seas.

On January 15, 1941 the vessel, proceeding on its voyage, was scheduled to arrive at Honolulu the next day. Pursuant to custom and in anticipation of arrival at port, the crew was ordered to the forward deck for the purpose of raising the booms and making the gear ready for discharge operations. During the course of this operation and while appellee was on or near the deck load, appellee was injured when his left hand was drawn by a moving line into a snatch block. The District Court held that the appellant was negligent in failing to supply the appellee with a safe place to work.

The points on which appellant will rely are these:

1. The District Court erred in finding that the appellant failed to provide the appellee with a safe place to work.

2. The District Court's finding that appellant had failed to provide appellee with a safe place to work is, in effect, a finding that it is negligence for a vessel to carry a deck load; and in so finding the court erred.

3. The District Court erred in finding the appellant guilty of negligence with respect to the condition of the deck load where the sole evidence was

that the deck load on the vessel was shifted by the action of the seas through no fault of appellant.

4. There is no evidence of negligence on the part of appellant and the District Court erred in its finding of negligence.

5. There is no evidence that any act or omission of appellant proximately caused the injuries of appellee and the District Court erred in finding that proximate cause had been proved.

6. The court erred in denying appellant's motion for dismissal made upon the ground that upon the facts and law appellee had shown no right to relief.

Appellant designates the following portions of the record which it thinks necessary for the consideration of this appeal:

1. The Complaint.

2. The Answer of Defendant Matson Navigation Company.

Notice of Appeal.

3. Reporter's Transcript of Evidence at the Trial of Case.

4. Deposition of Charles Wood Encell.

5. The Opinion of the District Court.

6. Appellant's Motion for Dismissal.

7. Order Denying Motion for Dismissal.
8. The District Court's Findings of Fact and Conclusions of Law.
9. The Judgment.

Dated: July 6, 1942.

Respectfully submitted,

BROBECK, PHLEGER
& HARRISON,

Attorneys for Appellant
Matson Navigation
Company

Due service and receipt of a copy of the within is hereby admitted this 6th day of July, 1942.

ANDERSEN & RESNER
Attorneys for Plaintiff.

[Endorsed]: Filed Jul. 6, 1942.